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**INDENTURE OF TRUST**

**by and between the**

**COMMUNITY IMPROVEMENT COMMISSION OF THE CITY OF ALAMEDA**

**and**

**UNION BANK, N.A.,  
as Trustee**

**dated as of April 1, 2011**

**relating to:**

**\$\_\_\_\_\_**

**Community Improvement Commission of the City of Alameda  
2011 Tax Allocation Housing Bonds, Series A (Taxable)  
(Merged WECIP/BWIP Project Area)**

**and**

**\$\_\_\_\_\_**

**Community Improvement Commission of the City of Alameda  
2011 Tax Allocation Housing Bonds, Series B (Tax-Exempt)  
(Merged WECIP/BWIP Project Area)**

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# TABLE OF CONTENTS

## ARTICLE I

### DEFINITIONS; RULES OF CONSTRUCTION

Section 1.01.	Definitions .....	3
Section 1.02.	Rules of Construction .....	12

## ARTICLE II

### AUTHORIZATION AND TERMS OF 2011 BONDS

Section 2.01.	Authorization and Purpose of 2011 Bonds .....	13
Section 2.02.	Terms of the 2011 Bonds .....	13
Section 2.03.	Redemption of 2011 Bonds .....	14
Section 2.04.	Form of 2011 Bonds; Authentication and Delivery .....	17
Section 2.05.	Transfer of 2011 Bonds .....	18
Section 2.06.	Exchange of 2011 Bonds .....	18
Section 2.07.	Registration Books .....	18
Section 2.08.	Temporary Bonds .....	18
Section 2.09.	Bonds Mutilated, Lost, Destroyed or Stolen .....	18
Section 2.10.	Use of Depository .....	19

## ARTICLE III

### DEPOSIT AND APPLICATION OF PROCEEDS OF 2011 BONDS; ISSUANCE OF PARITY DEBT

Section 3.01.	Issuance of 2011 Bonds .....	21
Section 3.02.	Deposit and Application of Proceeds .....	21
Section 3.03.	Costs of Issuance Fund .....	21
Section 3.04.	Housing Projects Fund .....	22
Section 3.05.	Issuance of Parity Debt .....	22
Section 3.06.	Issuance of Subordinate Debt .....	24
Section 3.07.	Validity of Bonds .....	24

## ARTICLE IV

### SECURITY OF BONDS; FLOW OF FUNDS; INVESTMENTS

Section 4.01.	Security of Bonds; Equal Security .....	25
Section 4.02.	Pledged Housing Set-Aside Fund; Deposit of Housing Tax Increment Revenues .....	25
Section 4.03.	Debt Service Fund; Transfer of Amounts to Trustee .....	25
Section 4.04.	Investment By Trustee of Moneys in Funds .....	28
Section 4.05.	Valuation and Disposition of Investments .....	28

## ARTICLE V

### OTHER COVENANTS OF THE AGENCY

Section 5.01.	Punctual Payment .....	30
Section 5.02.	Limitation on Superior Debt .....	30
Section 5.03.	Payment of Claims .....	30
Section 5.04.	Books and Accounts .....	30
Section 5.05.	Protection of Security and Rights .....	30
Section 5.06.	Payments of Taxes and Other Charges .....	30
Section 5.07.	Extension of Payment .....	31
Section 5.08.	Disposition of Property .....	31
Section 5.09.	Maintenance of Housing Tax Increment Revenues .....	31
Section 5.10.	Payment of Expenses; Indemnification .....	32
Section 5.11.	Tax Covenants Relating to Tax-Exempt Bonds .....	32
Section 5.12.	Continuing Disclosure .....	32
Section 5.13.	Further Assurances .....	33
Section 5.14.	Annual Review of Housing Tax Increment Revenues .....	33

Section 5.15.	Reservation of Funds for SERAF Payment .....	33
Section 5.16.	Use of Proceeds of Prior Bond Issues for Housing Purposes .....	33
Section 5.17.	Retirement of Obligations. ....	33

## ARTICLE VI THE TRUSTEE

Section 6.01.	Duties, Immunities and Liabilities of Trustee .....	34
Section 6.02.	Merger or Consolidation .....	35
Section 6.03.	Liability of Trustee .....	35
Section 6.04.	Right to Rely on Documents .....	36
Section 6.05.	Preservation and Inspection of Documents.....	37
Section 6.06.	Compensation and Indemnification .....	37
Section 6.07.	Accounting Records and Financial Statements.....	37
Section 6.08.	Appointment of Co-Trustee or Agent .....	37

## ARTICLE VII MODIFICATION OR AMENDMENT OF THIS INDENTURE

Section 7.01.	Amendment With Consent of Owners.....	39
Section 7.02.	Effect of Supplemental Indenture .....	39
Section 7.03.	Endorsement or Replacement of Bonds After Amendment .....	40
Section 7.04.	Amendment by Mutual Consent .....	40
Section 7.05.	Trustee's Reliance.....	40

## ARTICLE VIII EVENTS OF DEFAULT AND REMEDIES OF OWNERS

Section 8.01.	Events of Default .....	41
Section 8.02.	Application of Funds Upon Default .....	41
Section 8.03.	Power of Trustee to Control Proceedings.....	42
Section 8.04.	Limitation on Owners' Right to Sue .....	42
Section 8.05.	Non-waiver .....	43
Section 8.06.	Actions by Trustee as Attorney-in-Fact.....	43
Section 8.07.	Remedies Not Exclusive .....	43

## ARTICLE IX MISCELLANEOUS

Section 9.01.	Benefits Limited to Parties .....	44
Section 9.02.	Successor is Deemed Included in All References to Predecessor.....	44
Section 9.03.	Defeasance of Bonds .....	44
Section 9.04.	Execution of Documents and Proof of Ownership by Owners .....	45
Section 9.05.	Disqualified Bonds .....	45
Section 9.06.	Waiver of Personal Liability .....	45
Section 9.07.	Destruction of Canceled Bonds .....	45
Section 9.08.	Notices.....	45
Section 9.09.	CUSIP Numbers .....	46
Section 9.10.	Partial Invalidity .....	46
Section 9.11.	Unclaimed Moneys .....	46
Section 9.12.	Payment on Business Days .....	46
Section 9.13.	Article and Section Headings and References .....	46
Section 9.14.	Execution in Counterparts .....	47
Section 9.15.	Governing Law .....	47

EXHIBIT A – FORM OF 2011 SERIES A BONDS  
EXHIBIT B – FORM OF 2011 SERIES B BONDS  
EXHIBIT C – DESCRIPTION OF ALAMEDA LANDING PROPERTY

## INDENTURE OF TRUST

THIS INDENTURE OF TRUST (this "Indenture"), dated as of April 1, 2011, is by and between the COMMUNITY IMPROVEMENT COMMISSION OF THE CITY OF ALAMEDA, a public body, corporate and politic, duly organized and existing under the laws of the State of California (the "Agency"), and UNION BANK, N.A., a national banking association organized and existing under the laws of the United States of America, as trustee (the "Trustee").

### RECITALS:

WHEREAS, the Agency is a public body, corporate and politic, duly established and authorized to transact business and exercise powers under and pursuant to the provisions of the Redevelopment Law of the State of California, constituting Part 1 of Division 24 of the Health and Safety Code of the State of California (the "Redevelopment Law"), including the power to issue bonds for any of its corporate purposes; and

WHEREAS, there has been adopted under the Redevelopment Law a community improvement plan for the Agency's Business and Waterfront Improvement Project (the "BWIP Project") and a community improvement plan for the Agency's West End Community Improvement Project (the "WECIP Project"); and

WHEREAS, on April 1, 2003, the City Council of the City of Alameda adopted Ordinance Nos. 2896 and 2897 amending the redevelopment plans for the BWIP Project and the WECIP Project, respectively, to add territory (commonly referred to as the "Exchange Area") to the BWIP Project, and to fiscally merge the redevelopment project areas identified in the redevelopment plans for the BWIP Project and the WECIP Project to create the Merged WECIP/BWIP Project Area (the "Merged Project Area"); and

WHEREAS, the Agency has determined to issue its \$\_\_\_\_\_ initial principal amount of Community Improvement Commission of the City of Alameda 2011 Tax Allocation Housing Bonds, Series A (Taxable) (Merged WECIP/BWIP Project Area) (the "2011 Series A Bonds"), and its \$\_\_\_\_\_ initial principal amount of Community Improvement Commission of the City of Alameda 2011 Tax Allocation Housing Bonds, Series B (Tax-Exempt) (Merged WECIP/BWIP Project Area) (the "2011 Series B Bonds" and, together with the 2011 Series A Bonds, the "2011 Bonds"), under the provisions of the Redevelopment Law to finance certain housing activities of the Agency and to refinance an outstanding loan obligation of the Agency, with the 2011 Bonds to be repaid with Housing Tax Increment Revenues (as defined herein) arising from the Merged Project Area; and

WHEREAS, in order to provide for the authentication and delivery of the 2011 Bonds, to establish and declare the terms and conditions upon which the 2011 Bonds are to be issued and secured and to secure the payment of the principal thereof and interest and redemption premium (if any) thereon, the Agency and the Trustee have duly authorized the execution and delivery of this Indenture; and

WHEREAS, the Agency has determined that all acts and proceedings required by law necessary to make the 2011 Bonds, when executed by the Agency, authenticated and delivered by the Trustee and duly issued, the valid, binding and legal special obligations of the Agency, and to constitute this Indenture a valid and binding agreement for the uses and purposes herein set forth in accordance with its terms, have been done or taken.

## ***A G R E E M E N T :***

NOW, THEREFORE, in order to secure the payment of the principal of and the interest and redemption premium (if any) on all the Outstanding Bonds (as such terms are defined herein) under this Indenture according to their tenor, and to secure the performance and observance of all the covenants and conditions therein and herein set forth, and to declare the terms and conditions upon and subject to which the Bonds are to be issued and received, and in consideration of the premises and of the mutual covenants herein contained and of the purchase and acceptance of the Bonds by the Owners thereof, and for other valuable consideration the receipt and sufficiency of which is hereby acknowledged, the Agency and the Trustee do hereby covenant and agree with one another, for the benefit of the respective Owners from time to time of the Bonds, as follows:

## ARTICLE I

### DEFINITIONS; RULES OF CONSTRUCTION

**Section 1.01. Definitions.** Unless the context otherwise requires, the capitalized terms used in this Indenture, or any Supplemental Indenture, shall have the respective meanings which are given such terms in this Section 1.01.

“Additional Allowance” means, as of the date of calculation, the sum of the following:

(a) the amount of Housing Tax Increment Revenues which, as shown in the report of an Independent Redevelopment Consultant, are estimated to be receivable by the Agency in the next succeeding Fiscal Year as a result of increases in the assessed valuation of taxable property in the Merged Project Area due to construction which has been completed but has not yet been reflected on the tax roll; and

(b) the amount of Housing Tax Increment Revenues which, as shown in the report of an Independent Redevelopment Consultant, are estimated to be receivable by the Agency in the next succeeding Fiscal Year as a result of increases in the assessed valuation of taxable property in the Merged Project Area due to inflation at an assumed annual inflation rate equal to the lesser of (i) the annual rate of inflation for the preceding twelve-month period for which figures are available or (ii) two percent (2%), but only if the rate of inflation had increased by at least two percent (2%) in each of the preceding three Fiscal Years.

For purposes of this definition, the term “increases in the assessed valuation” means the amount by which the assessed valuation of taxable property in the Merged Project Area in the next succeeding Fiscal Year is estimated to exceed the assessed valuation of taxable property in the Merged Project Area (as reported by the County Auditor-Controller) in the Fiscal Year in which such calculation is made.

“Agency” means the Community Improvement Commission of the City of Alameda, a public body, corporate and politic, duly organized and existing under the Redevelopment Law.

“Alameda Landing Property” means the real property described in Exhibit C to this Indenture.

“Alameda Point Improvement Project” means the community improvement project approved by the City Council of the City pursuant to Ordinance No. 2754 adopted on March 3, 1998.

“Annual Debt Service” means, for each Bond Year, the sum of (a) the interest payable on the Outstanding Bonds in such Bond Year, and (b) the principal amount of the Outstanding Bonds scheduled to be paid in such Bond Year upon the maturity or mandatory Sinking Account redemption thereof.

“Authority” means the Alameda Public Financing Authority, a joint exercise of powers authority duly organized under the laws of the State.

“Bond Counsel” means (a) Quint & Thimmig LLP, or (b) any other attorney or firm of attorneys appointed by or acceptable to the Agency of nationally-recognized experience in the issuance of obligations the interest on which is excludable from gross income for federal income tax purposes under the Tax Code.

"Bond Year" means any twelve-month period beginning on September 2 in any year and extending to the next succeeding September 1, both dates inclusive; except that the first Bond Year shall begin on the Closing Date and end on September 1, 2011.

"Bonds" means, collectively, the 2011 Bonds and any Parity Debt.

"Business Day" means a day of the year (other than a Saturday or Sunday) on which banks in California or the state where the Office of the Trustee is located, are not required or permitted to be closed, and on which the New York Stock Exchange is open.

"Business Inventory Tax Subvention" means all amounts payable by the State to the Agency under and pursuant to the provisions of Chapter 1.5 of Part 1 of Division 4 of Title 2 (commencing with Section 16110) of the Government Code of the State.

"BWIP Plan" means the Community Improvement Plan for the BWIP Project Area, approved by Ordinance No. 2559 enacted by the City Council of the City on June 18, 1991, together with any amendments to such plan approved in accordance with the Redevelopment Law.

"BWIP Project Area" means the Business and Waterfront Improvement Project area described in the BWIP Plan, together with the area known as the "Exchange Area" added to the Business and Waterfront Improvement Project area by reason of amendments to the BWIP Plan and the Community Improvement Plan for the Alameda Point Improvement Project.

"Certificate of the Agency" means a certificate in writing signed by the Chair, Executive Director, Treasurer or Secretary of the Agency, or any other officer of the Agency duly authorized by the Agency for that purpose.

"City" means the City of Alameda, California, a charter city and municipal corporation organized and existing under the laws of the State.

"Closing Date" means April \_\_, 2011, being the date on which the 2011 Bonds are delivered by the Agency to the Original Purchaser.

"Continuing Disclosure Certificate" shall mean that certain Continuing Disclosure Certificate relating to the 2011 Bonds, between the Agency and the Trustee, as dissemination agent, dated as of the Closing Date, as originally executed and as it may be amended from time to time in accordance with the terms thereof.

"Costs of Issuance" means all items of expense directly or indirectly payable by or reimbursable to the Agency relating to the authorization, issuance, sale and delivery of the 2011 Bonds, including but not limited to the fees and expenses of the Original Purchaser and any underwriter who purchases the 2011 Bonds from the Original Purchaser, printing expenses, filing and recording fees, initial fees, expenses and charges of the Trustee and its counsel, including the Trustee's first annual administrative fee, acceptance fees, fees, charges and disbursements of attorneys, financial advisors, fiscal consultants, accounting firms, other consultants and other professionals, fees and charges for preparation, execution and safekeeping of the Bonds, rating agency fees, and any other cost, charge or fee in connection with the original issuance of the 2011 Bonds.

"Costs of Issuance Fund" means the fund by that name established and held by the Trustee pursuant to Section 3.03.



“County” means the County of Alameda, California, a county duly organized and existing under the Constitution and laws of the State.

“Debt Service Fund” means the fund by that name established and held by the Trustee pursuant to Section 4.03.

“Defeasance Securities” means any of the following, or any combination thereof: (a) cash; (b) non-callable Federal Securities (including State and Local Government Securities); (c) direct obligations of the United States of America which have been stripped by the Department of the Treasury of the United States of America; (d) CATS, TIGRS and similar securities; (d) interest component of obligations of the Resolution Funding Corp. (REFCORP), which have been stripped by request to the Federal Reserve Bank of New York; (e) pre-refunded municipal bonds rated “Aaa” by Moody’s and “AAA” by S&P; provided, however, if the issue is only rated by S&P (i.e., there is no Moody’s rating), then the pre-refunded bonds must have been pre-refunded with cash, direct U.S. or U.S. guaranteed obligations, or “AAA” rated pre-refunded municipals; and (f) bonds, debentures, notes or other evidence of indebtedness issued or guaranteed by any of the following federal agencies and provided such obligations are backed by the full faith and credit of the United States of America: (i) direct obligations or fully guaranteed certificates of beneficial ownership of the U.S. Export-Import Bank; (ii) certificates of beneficial ownership of the Farmers Home Administration; (iii) obligations of the Federal Financing Bank; (iv) participation certificates of the General Services Administration; (v) guaranteed Title XI financings of the U.S. Maritime Administration; (vi) U.S. government guaranteed public housing notes and bonds; and (vii) project notes and local authority bonds of the U.S. Department of Housing and Urban Development.

“Escrow Agreement” means the Escrow Deposit and Trust Agreement, dated as of April 1, 2011, between the Agency and the Escrow Bank.

“Escrow Bank” means The Bank of New York Mellon Trust Company, N.A., successor to Bank of America National Association and Savings Association, in its capacity as Trustee for the 1992 Bonds.

“Event of Default” means any of the events described in Section 8.01.

“Fair Market Value” means the price at which a willing buyer would purchase the investment from a willing seller in a bona fide, arm’s length transaction (determined as of the date the contract to purchase or sell the investment becomes binding) if the investment is traded on an established securities market (within the meaning of section 1273 of the Tax Code) and, otherwise, the term “Fair Market Value” means the acquisition price in a bona fide arm’s length transaction (as referenced above) if (i) the investment is a certificate of deposit that is acquired in accordance with applicable regulations under the Tax Code, (ii) the investment is an agreement with specifically negotiated withdrawal or reinvestment provisions and a specifically negotiated interest rate (for example, a guaranteed investment contract, a forward supply contract or other investment agreement) that is acquired in accordance with applicable regulations under the Tax Code, (iii) the investment is a United States Treasury Security-State and Local Government Series that is acquired in accordance with applicable regulations of the United States Bureau of Public Debt, or (iv) the investment is the Local Agency Investment Fund of the State of California, but only if at all times during which the investment is held, its yield is reasonably expected to be equal to or greater than the yield on a reasonably comparable direct obligation of the United States.

“Federal Securities” means: (a) any direct general obligations of the United States of America (including obligations issued or held in book entry form on the books of the Department of the Treasury of the United States of America), the payment of principal of and



interest on which are unconditionally and fully guaranteed by the United States of America; (b) obligations of any agency or department of the United States of America which represent the full faith and credit of the United States of America or the timely payment of the principal of and interest on which are secured or guaranteed by the full faith and credit of the United States of America; and (c) any obligations issued by the State or any political subdivision thereof the payment of the principal of and interest and premium (if any) on which are fully secured by Federal Securities described in the preceding clauses (a) or (b).

“Fiscal Year” means any twelve-month period beginning on July 1 in any year and extending to the next succeeding June 30, both dates inclusive, or any other twelve-month period selected and designated by the Agency as its official fiscal year period pursuant to a Certificate of the Agency filed with the Trustee.

“Housing Projects Fund” means the fund by that name established and held by the Trustee pursuant to Section 3.04.

“Housing Tax Increment Revenues” means all taxes annually allocated and paid to the Agency with respect to the Merged Project Area pursuant to Article 6 of Chapter 6 (commencing with Section 33670) of the Redevelopment Law and Section 16 of Article XVI of the Constitution of the State including all payments, subventions and reimbursements (if any) to the Agency specifically attributable to ad valorem taxes lost by reason of tax exemptions and tax rate limitations, which are required to be deposited into the Low and Moderate Income Housing Fund of the Agency in any Fiscal Year pursuant to Section 33334.2 or Section 33334.6 of the Redevelopment Law; but excluding any such taxes arising from the Alameda Landing Property and any Business Inventory Tax Subvention.

“Indenture” means this Indenture of Trust by and between the Agency and the Trustee, as amended or supplemented from time to time pursuant to any Supplemental Indenture entered into pursuant to the provisions hereof.

“Independent Accountant” means any accountant or firm of such accountants duly licensed or registered or entitled to practice and practicing as such under the laws of the State, appointed by or acceptable to the Agency, and who, or each of whom: (a) is, in fact, independent and not under domination of the Agency; (b) does not have any substantial interest, direct or indirect, with the Agency; and (c) is not connected with the Agency as an officer or employee of the Agency, but who may be regularly retained to make reports to the Agency.

“Independent Redevelopment Consultant” means any consultant or firm of such consultants appointed by or acceptable to the Agency and who, or each of whom: (a) is judged by the Agency to have experience in matters relating to the collection of Housing Tax Increment Revenues or otherwise with respect to the financing of redevelopment projects; (b) is, in fact, independent and not under domination of the Agency; (c) does not have any substantial interest, direct or indirect, with the Agency other than as the Original Purchaser; and (d) is not connected with the Agency as an officer or employee of the Agency, but who may be regularly retained to make reports to the Agency.

“Information Services” means the Electronic Municipal Market Access System (referred to as “EMMA”), a facility of the Municipal Securities Rulemaking Board, (at <http://emma.msrb.org>); and, in accordance with then current guidelines of the Securities and Exchange Commission, such other addresses and/or such other services providing information with respect to the redemption of bonds as the Agency may designate in a Request of the Agency delivered to the Trustee.

"Interest Account" means the account by that name established and held by the Trustee pursuant to Section 4.03(a).

"Interest Payment Date" means September 1, 2011, and each March 1 and September 1 thereafter until the earlier of the redemption or maturity of the Bonds.

"Maximum Annual Debt Service" means, as of the date of calculation, the largest amount obtained by totaling, for the current or any future Bond Year, the sum of (a) the amount of interest payable on the Bonds in such Bond Year, assuming that principal of each thereof is paid as scheduled and that any mandatory sinking fund payments are made as scheduled, and (b) the amount of principal payable on the Bonds in such Bond Year, including any principal required to be prepaid by operation of mandatory sinking fund payments.

"Merged Project Area" means the merged BWIP Project Area and the WECIP Project Area, as such merger was completed pursuant to Ordinance Nos. 2896 and 2897 adopted by the City Council of the City on April 1, 2003.

"Minimum Rating" means, with respect to any Permitted Investment that requires a Minimum Rating, a long-term rating of "A" or better from S&P or a short-term rating which is in the highest general rating category of S&P, in any event determined without regard to any refinement or gradation of such rating by a numerical modifier, a plus or a minus sign, or otherwise.

"Moody's" means Moody's Investors Service of New York, New York, and its successors.

"1992 Bonds" means the Alameda Public Financing Authority 1992 Revenue Bonds, Series A (West End Community Improvement Project – Housing Increment Loan).

"1992 Loan Agreement" means the Loan Agreement, dated as of April 1, 1992, between the Authority and the Agency.

"Office" means the corporate trust office of the Trustee at the location identified in Section 9.08 hereof, except that with respect to presentation of Bonds for payment or for registration of transfer and exchange such term shall mean the office or agency of the Trustee at which, at any particular time, its corporate trust agency business shall be conducted, or at such other place or places as may be designated by the Trustee from time to time in written notice filed with the Agency.

"Original Purchaser" means the Authority, as original purchaser of the 2011 Bonds from the Agency.

"Outstanding", when used as of any particular time with reference to Bonds, means (subject to the provisions of Section 9.05) all Bonds except: (a) Bonds theretofore canceled by the Trustee or surrendered to the Trustee for cancellation; (b) Bonds paid or deemed to have been paid within the meaning of Section 9.03; and (c) Bonds in lieu of or in substitution for which other Bonds shall have been authorized, executed, issued and delivered by the Agency and authenticated by the Trustee pursuant hereto.

"Owner" means, with respect to any Bond, the person in whose name the ownership of such Bond shall be registered on the Registration Books.

"Parity Debt" means, collectively (a) any loans, bonds, notes, advances or indebtedness payable from Housing Tax Increment Revenues on a parity with the 2011 Bonds issued or

incurred pursuant to and in accordance with the provisions of the first paragraph of Section 3.05, and (b) any Refunding Debt issued or incurred in accordance with the provisions of the second paragraph of Section 3.05.

“Parity Debt Instrument” means any resolution, indenture of trust, trust agreement or other instrument authorizing the issuance and/or execution and delivery of any Parity Debt.

“Participating Underwriter” shall have the meaning ascribed thereto in the Continuing Disclosure Certificate.

“Permitted Investments” means any of the following, which at the time of investment are authorized investments under the City’s Investment Policy as then in effect (the Trustee may conclusively rely on a representation of the Agency with respect thereto), but only to the extent that the same are acquired at Fair Market Value:

(a) Federal Securities.

(b) Obligations issued by the Federal Farm Credit Bank System (FFCB), the Federal Home Loan Bank Board (FHLB), the Federal Home Loan Mortgage Corporation (FHLMC), the Federal National Mortgage Association (FNMA), and other United States agency obligations with maturities of five years or less.

(c) Bills of exchange or time drafts drawn on and accepted by a commercial bank, otherwise known as banker's acceptances. Banker's acceptances purchased may not exceed 180 days to maturity.

(d) Commercial paper ranking of the highest letter and number rating by a nationally recognized statistical rating organization (NRSRO), and issued by a domestic corporation having assets in excess of \$500,000,000 and having an “A-1” or better rating on its long-term debentures as provided by a NRSRO. Maturity is not to exceed 180 days.

(e) Certificates of deposit and time deposits (including money market accounts) issued by nationally or state-chartered banks or state or federal savings and loan associations. Issuers must be rated “B” or better by Thomson Bank Watch or equivalent rating service, or rated A-1 for deposits by S&P, or P-1 for deposits by Moody’s or comparably rated by a national rating agency.

(f) Investments in repurchase agreements with banks and dealers with which the City, the Agency or the Trustee has entered into a master repurchase agreement which specifies terms and conditions of repurchase agreements. Transactions shall be limited to the primary dealers and the top banking institutions according to the rating agency based on liquidity, profitability, and financial strength. The maturity of repurchase agreements shall not exceed 30 days. The market value of securities used as collateral for repurchase agreements shall be monitored daily by the investment staff and will not be allowed to fall below 102% of the value of the repurchase agreement plus the value of collateral in excess of the value of the repurchase agreement. In order to conform with provisions of the Federal Bankruptcy Code which provide for the liquidation of securities held as collateral for repurchase agreements, the only securities acceptable as collateral shall be certificates of deposit, eligible bankers' acceptances, or securities that are direct obligations of, or that are fully guaranteed as to principal and interest by, the United States or any agency of the United States. A “perfected security interest” shall always be maintained in the securities subject to a repurchase agreement.

(g) The Local Agency Investment Fund (LAIF) established by the State Treasurer for the benefit of local agencies.

(h) Unsecured certificates of deposit and time deposits (having maturities of not more than 365 days) of any bank the short-term obligations of which are rated on the date of purchase "A-1+" or better by S&P and "P-1" by Moody's and or certificates of deposit (including those of the Trustee, its parent and its affiliates) secured at all times by collateral that may be used by a national bank for purposes of satisfying its obligations to collateralize pursuant to federal law which are issued by commercial banks, savings and loan associations or mutual savings bank whose short-term obligations are rated on the date of purchase A-1 or better by S&P, Moody's and Fitch.

(i) Money market funds which are rated in the highest rating category by S&P.

(j) Any other lawful investment for Agency funds.

"Plan Limitations" means the limitations contained or incorporated in the Redevelopment Plan, if any, or imposed by the Redevelopment Law on (a) the aggregate principal amount of indebtedness payable from taxes which may be divided and allocated to the Agency with respect to the Merged Project Area pursuant to the Redevelopment Plan which may be outstanding at any time, (b) the aggregate amount of taxes which may be divided and allocated to the Agency with respect to the Merged Project Area pursuant to the Redevelopment Plan, and (c) the period of time for repaying indebtedness payable from taxes which may be divided and allocated to the Agency with respect to the Merged Project Area pursuant to the Redevelopment Plan.

"Pledged Housing Set-Aside Fund" means the fund by that name established and held by the Agency pursuant to Section 4.02.

"Principal Account" means the account by that name established and held by the Trustee pursuant to Section 4.03(b).

"Qualified Reserve Account Credit Instrument" means an irrevocable standby or direct-pay letter of credit or surety bond issued by a commercial bank or insurance company and deposited with the Trustee pursuant to Section 4.03(d), provided that all of the following requirements are met at the time any such instrument is delivered to the Trustee: (a) the long-term credit rating or claims paying ability of such bank or insurance company is in one of the three highest rating categories by S&P or Moody's; (b) such letter of credit or surety bond has a term of at least twelve (12) months; (c) such letter of credit or surety bond has a stated amount at least equal to the portion of the Reserve Requirement with respect to which funds are proposed to be released pursuant to Section 4.03(d); and (d) the Trustee is authorized pursuant to the terms of such letter of credit or surety bond to draw thereunder an amount equal to any deficiencies which may exist from time to time in the Interest Account, the Principal Account or the Sinking Account for the purpose of making payments required pursuant to Section 4.03.

"Record Date" means, with respect to any Interest Payment Date, the close of business on the fifteenth (15<sup>th</sup>) calendar day of the month preceding such Interest Payment Date, whether or not such fifteenth (15<sup>th</sup>) calendar day is a Business Day.

"Redemption Account" means the account by that name established and held by the Trustee pursuant to Section 4.03(e).

"Redevelopment Law" means the Redevelopment Law of the State, constituting Part 1 of Division 24 of the Health and Safety Code of the State, and the acts amendatory thereof and supplemental thereto.

"Redevelopment Plan" means, collectively, the BWIP Plan and the WECIP Plan.

"Redevelopment Project" means the undertaking of the Agency pursuant to the Redevelopment Plan and the Redevelopment Law for the redevelopment of the Merged Project Area.

"Refunding Debt" means any loan, bond, note, advance or indebtedness the proceeds thereof are used to refund all or a portion of the 2011 Bonds or any Parity Debt (and to pay costs of issuance of and fund a reserve fund for such Refunding Debt), and the debt service due on such Refunding Debt in any Bond Year in which the Refunding Debt is Outstanding is not greater than the debt service due in such Bond Year on the portion of the 2011 Bonds or the Parity Debt, as applicable, refunded with the proceeds of such Refunding Debt.

"Registration Books" means the records maintained by the Trustee pursuant to Section 2.07 for the registration and transfer of ownership of the Bonds.

"Report" means a document in writing signed by an Independent Accountant or an Independent Redevelopment Consultant and including: (a) a statement that the person or firm making or giving such Report has read the pertinent provisions of this Indenture to which such Report relates; (b) a brief statement as to the nature and scope of the examination or investigation upon which the Report is based; and (c) a statement that, in the opinion of such person or firm, sufficient examination or investigation was made as is necessary to enable such person or firm to express an informed opinion with respect to the subject matter referred to in the Report.

"Request of the Agency" means a request in writing signed by the Chair, Executive Director, Treasurer or Secretary of the Agency, or any other officer of the Agency duly authorized by the Agency for that purpose.

"Reserve Account" means the account by that name established and held by the Trustee pursuant to Section 4.03(d).

"Reserve Requirement" means, as of the date of any calculation by the Agency, the least of (a) Maximum Annual Debt Service, (b) one hundred twenty-five percent (125%) of average Annual Debt Service, or (c) ten percent (10%) of the initial principal amount of the Bonds. As of the Closing Date, the Reserve Requirement is \$\_\_\_\_\_.

"Securities Depositories" means The Depository Trust Company, 55 Water Street, 15L, New York, New York 10041-0099, Attention: Call Notification Department, Fax-(212) 855-3274; and, in accordance with then current guidelines of the Securities and Exchange Commission, such other addresses and/or such other securities depositories as the Agency may designate in a Request of the Agency delivered by the Agency to the Trustee.

"Senior Debt" means, collectively (a) the Community Improvement Commission of the City of Alameda Taxable Tax Allocation Refunding Bonds (Business and Waterfront Improvement Area), Series 2003D, and (b) 15.85% of the debt service due on any date on the Community Improvement Commission of the City of Alameda Tax Allocation Refunding Bonds (Business and Waterfront Improvement Area), Series 2003C. The foregoing bonds were issued and are outstanding under the Indenture of Trust, dated as of October 1, 2003, between the Agency and Union Bank, N.A. (formerly known as Union Bank of California, N.A.).

“Senior Refunding Debt” means any loan, bond, note, advance or indebtedness the proceeds thereof are used to refund all or a portion of the Senior Debt (and to pay costs of issuance of and fund a reserve fund for such Refunding Debt), and the debt service payable from Housing Tax Increment Revenues due on such Refunding Debt in any Bond Year in which the Refunding Debt is outstanding is not greater than the debt service payable from Housing Tax Increment Revenues due in such Bond Year on the portion of the Senior Debt refunded with the proceeds of such Refunding Debt.

“Sinking Account” means the account by that name established and held by the Trustee pursuant to Section 4.03(b).

“S&P” means Standard & Poor’s Ratings Group, a division of The McGraw-Hill Companies, Inc., New York, New York, and its successors.

“State” means the State of California.

“Subordinate Debt” means any loans, advances or indebtedness issued or incurred by the Agency in accordance with the requirements of Section 3.06, which are either: (i) payable from, but not secured by a pledge of or lien upon, the Housing Tax Increment Revenues; or (ii) secured by a pledge of or lien upon the Housing Tax Increment Revenues which is subordinate to the pledge of and lien upon the Housing Tax Increment Revenues hereunder for the security of the Bonds.

“Supplemental Indenture” means any resolution, agreement or other instrument which amends, supplements or modifies this Indenture and which has been duly adopted or entered into by the Agency; but only if and to the extent that such Supplemental Indenture is specifically authorized hereunder.

“Tax Code” means the Internal Revenue Code of 1986, as in effect on the date of issuance of the 2011 Bonds or (except as otherwise referenced herein) as it may be amended to apply to obligations issued on the date of issuance of the 2011 Bonds, together with applicable Tax Regulations.

“Tax-Exempt Bonds” means Bonds the interest on which is not intended to be included in the gross incomes of the owners thereof for federal income tax purposes, and includes the 2011 Series B Bonds and any Parity Debt or any series thereof issued under a Supplemental Indenture designated as “Tax-Exempt Bonds” in such Supplemental Indenture.

“Tax Regulations” means temporary and permanent regulations promulgated under Section 103 and all related provisions of the Tax Code.

“Term Bonds” means, collectively (a) the 2011 Series A Bonds maturing on September 1, \_\_\_\_, and September 1, \_\_\_\_, (b) the 2011 Series B Bonds maturing on September 1, \_\_\_\_ and September 1, \_\_\_\_, and (c) any maturity of Parity Debt which is subject to mandatory Sinking Account redemption pursuant to the Parity Debt Instrument authorizing the issuance thereof.

“Trustee” means Union Bank, N.A., as Trustee hereunder, or any successor thereto appointed as Trustee hereunder in accordance with the provisions of Article VI.

“2011 Bonds” means, collectively, the 2011 Series A Bonds and the 2011 Series B Bonds.



"2011 Series A Bonds" means the Community Improvement Commission of the City of Alameda 2011 Tax Allocation Housing Bonds, Series A (Taxable) (Merged WECIP/BWIP Project Area), issued and Outstanding under this Indenture.

"2011 Series B Bonds" means the Community Improvement Commission of the City of Alameda 2011 Tax Allocation Housing Bonds, Series B (Tax-Exempt) (Merged WECIP/BWIP Project Area), issued and Outstanding under this Indenture.

"WECIP Plan" means the Community Improvement Plan for the WECIP Project Area, approved by Ordinance No. 2141 enacted by the City Council of the City on July 5, 1983, together with any amendments to such plan approved in accordance with the Redevelopment Law.

"WECIP Project Area" means the West End Community Improvement Project area described in the WECIP Plan.

**Section 1.02. Rules of Construction.** All references herein to "Articles," "Sections" and other subdivisions are to the corresponding Articles, Sections or subdivisions of this Indenture, and the words "herein," "hereof," "hereunder" and other words of similar import refer to this Indenture as a whole and not to any particular Article, Section or subdivision hereof.



## ARTICLE II

### AUTHORIZATION AND TERMS OF 2011 BONDS

**Section 2.01. Authorization and Purpose of 2011 Bonds.** The Agency has reviewed all proceedings heretofore taken and has found, as a result of such review, and hereby finds and determines that all things, conditions and acts required by law to exist, happen or be performed precedent to and in connection with the issuance of the 2011 Bonds do exist, have happened and have been performed in due time, form and manner as required by law, and the Agency is now duly empowered, pursuant to each and every requirement of law, including the Redevelopment Law, to issue the 2011 Bonds in the manner and form provided in this Indenture.

2011 Series A Bonds in the aggregate initial principal amount of \_\_\_\_\_ Million \_\_\_\_\_ Hundred \_\_\_\_\_ Thousand Dollars (\$ \_\_\_\_\_), and 2011 Series B Bonds in the aggregate initial principal amount of \_\_\_\_\_ Million \_\_\_\_\_ Thousand Dollars (\$ \_\_\_\_\_), are hereby authorized to be issued by the Agency under the Redevelopment Law for the purpose of making deposits to the Housing Projects Fund, the Costs of Issuance Fund, an escrow fund established under the Escrow Agreement and the Reserve Account, all as provided in Section 3.02. The 2011 Series A Bonds are designated the "Community Improvement Commission of the City of Alameda 2011 Tax Allocation Housing Bonds, Series A (Taxable) (Merged WECIP/BWIP Project Area)," and the 2011 Series B Bonds are designated "Community Improvement Commission of the City of Alameda 2011 Tax Allocation Housing Bonds, Series B (Tax-Exempt ) (Merged WECIP/BWIP Project Area)." The 2011 Bonds are authorized and issued under, and are subject to the terms of, this Indenture and the Redevelopment Law.

**Section 2.02. Terms of the 2011 Bonds.** The 2011 Series A Bonds shall be issued in fully-registered form without coupons in denominations equal to \$5,000 or any integral multiple thereof. No 2011 Series A Bond shall have more than one maturity date. The 2011 Series A Bonds shall be dated the Closing Date, and shall be in the principal amounts, shall mature on September 1 in the years, and shall bear interest (calculated on the basis of a 360-day year comprised of twelve 30-day months) at the respective rates of interest per annum as follows:

Maturity Date  
(September 1)

Principal Amount

Interest Rate

The 2011 Series B Bonds shall be issued in fully-registered form without coupons in denominations equal to \$5,000 or any integral multiple thereof. No 2011 Series B Bond shall have more than one maturity date. The 2011 Series B Bonds shall be dated the Closing Date, and shall be in the principal amounts, shall mature on September 1 in the years, and shall bear interest (calculated on the basis of a 360-day year comprised of twelve 30-day months) at the respective rates of interest per annum as follows:

Maturity Date  
(September 1)

Principal Amount

Interest Rate

Interest on the 2011 Bonds shall be payable from the Interest Payment Date next preceding the date of authentication thereof unless (i) a 2011 Bond is authenticated on or before an Interest Payment Date and after the close of business on the preceding Record Date, in which event it shall bear interest from such Interest Payment Date, (ii) a 2011 Bond is authenticated on or before the Record Date preceding the first Interest Payment Date, in which event interest thereon shall be payable from the Closing Date, or (iii) interest on any 2011 Bond is in default as of the date of authentication thereof, in which event interest thereon shall be payable from the date to which interest has been paid in full, payable on each Interest Payment Date. Interest shall be paid on each Interest Payment Date to the persons in whose names the ownership of the 2011 Bonds is registered on the Registration Books at the close of business on the immediately preceding Record Date, except as provided below. Interest on any 2011 Bond which is not punctually paid or duly provided for on any Interest Payment Date shall be payable to the person in whose name the ownership of such 2011 Bond is registered on the Registration Books at the close of business on a special record date for the payment of such defaulted interest to be fixed by the Trustee, notice of which shall be given to such Owner not less than ten (10) days prior to such special record date.

Interest on the 2011 Bonds shall be paid by check of the Trustee mailed by first-class mail, postage prepaid, on each Interest Payment Date to the Owners of the 2011 Bonds at their respective addresses shown on the Registration Books as of the close of business on the preceding Record Date; *provided, however*, that at the written request of the Owner of Bonds in an aggregate principal amount of at least \$1,000,000, which written request is on file with the Trustee as of any Record Date, and as otherwise provided in Section 2.10, interest on the applicable Bonds shall be paid on each succeeding Interest Payment Date by wire transfer in immediately available funds to such account within the United States of America as shall be specified in such written request (any such written request shall remain in effect until rescinded in writing by the Owner). The principal of and premium (if any) on the 2011 Bonds shall be payable in lawful money of the United States of America by check of the Trustee upon presentation and surrender thereof at the Office of the Trustee.

**Section 2.03. Redemption of 2011 Bonds.** (a) Optional Redemption of 2011 Bonds.

(i) The 2011 Series A Bonds maturing on and after September 1, \_\_\_\_, shall be subject to redemption in whole or in part on any date at the Request of the Agency, among maturities as determined by the Agency, and in any case by lot within a maturity, on or after September 1, \_\_\_\_, at the option of the Agency from any available source of funds, at a redemption price equal to one hundred percent (100%) of the principal amount thereof to be redeemed together with accrued interest thereon to the redemption date, without premium.

(ii) The 2011 Series B Bonds maturing on September 1, \_\_\_\_, shall be subject to redemption in whole or in part on any date at the Request of the Agency, among maturities as determined by the Agency, and in any case by lot within a maturity, on or after September 1, \_\_\_\_, at the option of the Agency from any available source of funds, at a redemption price equal to one hundred percent (100%) of the principal amount thereof to be redeemed together with accrued interest thereon to the redemption date, without premium.

(iii) The Agency shall be required to give the Trustee written notice of its intention to redeem 2011 Series A Bonds or 2011 Series B Bonds under this subsection (a), and the manner of selecting such 2011 Series A Bonds or 2011 Series B Bonds for redemption from among the maturities thereof, at least forty-five (45) days prior to the date fixed for such redemption unless the Trustee otherwise agrees, in its sole discretion, to a shorter period for such notice (as such notice is for the convenience of the Trustee).

(b) Mandatory Sinking Account Redemption of 2011 Bonds.

(i) The 2011 Series A Bonds maturing on September 1, \_\_\_\_, and September 1, \_\_\_\_, shall also be subject to redemption in whole, or in part by lot, on September 1, \_\_\_\_, and September 1, \_\_\_\_, respectively, and on September 1 in each year thereafter as set forth in the following tables, from Sinking Account payments made by the Agency pursuant to Section 4.03(b), at a redemption price equal to the principal amount thereof to be redeemed together with accrued interest thereon to the redemption date, without premium, or in lieu thereof shall be purchased pursuant to Section 2.03(b)(iii), in the aggregate respective principal amounts and on the respective dates as set forth in the following tables; *provided, however*, that if some but not all of such 2011 Series A Bonds have been redeemed pursuant to subsection (a)(i) above, the total amount of all future Sinking Account payments pursuant to this subsection (b)(i) shall be reduced by the aggregate principal amount of such 2011 Series A Bonds so redeemed, to be allocated among such Sinking Account payments in integral multiples of \$5,000 as determined by the Agency (written notice of which determination shall be given by the Agency to the Trustee).

2011 Series A Bonds Maturing September 1, \_\_\_\_

Sinking Account Redemption Date (September 1)	Principal Amount To Be Redeemed
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2011 Series A Bonds Maturing September 1, \_\_\_\_

Sinking Account Redemption Date (September 1)	Principal Amount To Be Redeemed
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(ii) The 2011 Series B Bonds maturing on September 1, \_\_\_\_, shall also be subject to redemption in whole, or in part by lot, on September 1, \_\_\_\_, and on September 1 in each year thereafter as set forth in the following tables, from Sinking Account payments made by the Agency pursuant to Section 4.03(b), at a redemption price equal to the principal amount thereof to be redeemed together with accrued interest thereon to the redemption date, without premium, or in lieu thereof shall be purchased pursuant to Section 2.03(b)(iii), in the aggregate respective principal amounts and on the respective dates as set forth in the following tables;

*provided, however,* that if some but not all of such 2011 Series B Bonds have been redeemed pursuant to subsection (a)(ii) above, the total amount of all future Sinking Account payments pursuant to this subsection (b)(ii) shall be reduced by the aggregate principal amount of such 2011 Series B Bonds so redeemed, to be allocated among such Sinking Account payments in integral multiples of \$5,000 as determined by the Agency (written notice of which determination shall be given by the Agency to the Trustee).

2011 Series B Bonds Maturing September 1, \_\_\_\_

Sinking Account  
Redemption Date  
(September 1)

Principal Amount  
To Be Redeemed

(iii) In lieu of redemption of the 2011 Series A Bonds pursuant to subsection (i) above or 2010 Series B Bonds pursuant to subsection (ii) above, amounts on deposit in the Pledged Housing Set-Aside Fund (to the extent not required to be transferred to the Trustee pursuant to this Indenture, or the trustee for any Parity Debt pursuant to any Parity Debt Instrument, to pay principal (including any sinking payments) and interest due on the Bonds during the then current Bond Year) may also be used and withdrawn by the Agency at any time prior to the selection of 2011 Bonds for redemption for the purchase of such 2011 Bonds at public or private sale as and when and at such prices (including brokerage and other charges and including accrued interest) as the Agency may in its discretion determine. The par amount of any of such 2011 Bonds so purchased by the Agency and surrendered to the Trustee for cancellation at least sixty (60) days prior to any scheduled redemption date shall be credited towards and shall reduce the par amount of 2011 Bonds required to be redeemed pursuant to this subsection (b) on such date.

(c) Notice of Redemption. The Trustee on behalf and at the expense of the Agency shall mail (by first-class mail, postage prepaid) notice of any redemption at least thirty (30) but not more than sixty (60) days prior to the redemption date, to (i) the Owners of any 2011 Bonds designated for redemption at their respective addresses appearing on the Registration Books, and (ii) the Securities Depositories and to one or more Information Services; *provided, however,* that such mailing shall not be a condition precedent to such redemption and neither failure to receive any such notice nor any defect therein shall affect the validity of the proceedings for the redemption of such 2011 Bonds or the cessation of the accrual of interest thereon. Such notice shall state the redemption date and the redemption price, shall designate the CUSIP number(s) of the 2011 Bonds to be redeemed, shall state the individual number of each Bond to be redeemed or state that all 2011 Bonds between two stated numbers (both inclusive) or shall state that all of the 2011 Bonds Outstanding of one or more maturities are to be redeemed, and shall require that such 2011 Bonds be then surrendered at the Office of the Trustee for redemption at the said redemption price, giving notice also that further interest on the 2011 Bonds to be redeemed will not accrue from and after the date fixed for redemption.

Notwithstanding the foregoing, in the case of any optional redemption of the 2011 Bonds under Section 2.03(a) above, the notice of redemption shall state that the redemption is conditioned upon receipt by the Trustee of sufficient moneys to redeem the 2011 Bonds on the anticipated redemption date, and that the optional redemption shall not occur if by no later than the scheduled redemption date sufficient moneys to redeem the 2011 Bonds have not been

deposited with the Trustee. In the event that the Trustee does not receive sufficient funds by the scheduled optional redemption date to so redeem the 2011 Bonds to be optionally redeemed, the Trustee shall send written notice to the Owners of the 2011 Bonds, to the Securities Depositories and to one or more of the Information Services to the effect that the redemption did not occur as anticipated, and the 2011 Bonds for which notice of optional redemption was given shall remain Outstanding for all purposes of this Indenture.

(d) Partial Redemption of Bonds. In the event only a portion of any 2011 Bond is called for redemption, then upon surrender thereof the Agency shall execute and the Trustee shall authenticate and deliver to the Owner thereof, at the expense of the Agency, a new 2010 Bond or 2011 Bonds of the same interest rate, series and maturity, of authorized denominations in aggregate principal amount equal to the unredeemed portion of the 2011 Bond to be redeemed.

(e) Effect of Redemption. From and after the date fixed for redemption, if funds available for the payment of the redemption price of and interest on the 2011 Bonds so called for redemption shall have been duly deposited with the Trustee, such 2011 Bonds so called shall cease to be entitled to any benefit under this Indenture other than the right to receive payment of the redemption price and accrued interest to the redemption date, and no interest shall accrue thereon from and after the redemption date specified in such notice.

(f) Manner of Redemption. Whenever provision is made in this Indenture for the redemption of less than all of the 2011 Bonds, unless otherwise provided herein, the Agency in its discretion shall determine the maturities to be redeemed by written notice to the Trustee, and the Trustee shall select the 2011 Bonds within a maturity to be redeemed by lot in any manner which the Trustee in its sole discretion shall deem appropriate. For purposes of such selection, all 2011 Bonds shall be deemed to be comprised of separate \$5,000 denominations and such separate denominations shall be treated as separate 2011 Bonds which may be separately redeemed. Notwithstanding the foregoing, if for any reason the Agency fails to provide the Trustee with direction as to the maturities of a series to be redeemed, the Trustee shall select the 2011 Bonds to be redeemed pro rata among maturities.

**Section 2.04. Form of 2011 Bonds; Authentication and Delivery.** The 2011 Series A Bonds, the form of Trustee's certificate of authentication, and the form of assignment to appear thereon, shall be substantially in the respective forms set forth in Exhibit A attached hereto and by this reference incorporated herein, with necessary or appropriate variations, omissions and insertions, as permitted or required by this Indenture. The 2011 Series B Bonds, the form of Trustee's certificate of authentication, and the form of assignment to appear thereon, shall be substantially in the respective forms set forth in Exhibit B attached hereto and by this reference incorporated herein, with necessary or appropriate variations, omissions and insertions, as permitted or required by this Indenture.

The 2011 Bonds shall be executed on behalf of the Agency by the signature of its Chair and the signature of its Secretary who are in office on the date of execution and delivery of this Indenture or at any time thereafter. Either or both of such signatures may be made manually or may be affixed by facsimile thereof. If any officer whose signature appears on any 2011 Bond ceases to be such officer before the Closing Date, such signature shall nevertheless be as effective as if the officer had remained in office until the Closing Date. Any 2011 Bond may be signed and attested on behalf of the Agency by such persons as at the actual date of the execution of such 2011 Bond shall be the proper officers of the Agency, duly authorized to execute debt instruments on behalf of the Agency, although on the date of such 2011 Bond any such person shall not have been such officer of the Agency.

Only such of the 2011 Bonds as shall bear thereon a certificate of authentication in the form set forth in Exhibit A or Exhibit B, as applicable, manually executed and dated by the



Trustee, shall be valid or obligatory for any purpose or entitled to the benefits of this Indenture, and such certificate of the Trustee shall be conclusive evidence that such 2011 Bonds have been duly authenticated and delivered hereunder and are entitled to the benefits of this Indenture.

**Section 2.05. Transfer of 2011 Bonds.** Any 2011 Bond may, in accordance with its terms, be transferred, upon the Registration Books, by the person in whose name it is registered, in person or by a duly authorized attorney of such person, upon presentation of such Bond to the Trustee at its Office for cancellation, accompanied by delivery of a written instrument of transfer in a form acceptable to the Trustee, duly executed. The cost of printing 2011 Bonds and any services rendered or expenses incurred by the Trustee in connection with any transfer shall be paid by the Agency. The Trustee shall collect any tax or other governmental charge on the transfer of any 2011 Bonds pursuant to this Section 2.05. Whenever any 2011 Bond or 2011 Bonds shall be surrendered for transfer, the Agency shall execute and the Trustee shall authenticate and deliver to the transferee a new 2011 Bond or 2011 Bonds of like series, maturity and aggregate principal amount of authorized denominations.

The Trustee may refuse to transfer, under the provisions of this Section 2.05, any 2011 Bonds selected by the Trustee for redemption pursuant to Section 2.03 or any 2011 Bonds during the period in which 2011 Bonds are selected for redemption.

**Section 2.06. Exchange of 2011 Bonds.** The 2011 Bonds may be presented for exchange at the Office of the Trustee for a like aggregate principal amount of 2011 Bonds of other authorized denominations and of the same series and maturity. The Trustee shall collect any tax or other governmental charge on the exchange of any 2011 Bonds pursuant to this Section 2.06. The cost of printing 2011 Bonds and any services rendered or expenses incurred by the Trustee in connection with any exchange shall be paid by the Agency.

The Trustee may refuse to exchange, under the provisions of this Section 2.06, any 2011 Bonds selected by the Trustee for redemption pursuant to Section 2.03 or any 2011 Bonds during the period in which 2011 Bonds are selected for redemption.

**Section 2.07. Registration Books.** The Trustee will keep or cause to be kept sufficient records for the registration and registration of transfer of the Bonds, which shall at all times during normal business hours, and upon reasonable notice, be open to inspection by the Agency; and, upon presentation for such purpose, the Trustee shall, under such reasonable regulations as it may prescribe, register or transfer or cause to be registered or transferred, on the Registration Books, Bonds as hereinbefore provided.

**Section 2.08. Temporary Bonds.** The Bonds may be initially issued in temporary form exchangeable for definitive Bonds when ready for delivery. The temporary Bonds may be printed, lithographed or typewritten, shall be of such denominations as may be determined by the Agency, and may contain such reference to any of the provisions of this Indenture as may be appropriate. Every temporary Bond shall be executed by the Agency upon the same conditions and in substantially the same manner as the definitive Bonds. If the Agency issues temporary Bonds it will execute and furnish definitive Bonds without delay, and thereupon the temporary Bonds shall be surrendered for cancellation, in exchange therefor at the Office of the Trustee, and the Trustee shall deliver in exchange for such temporary Bonds an equal aggregate principal amount of definitive Bonds of authorized denominations. Until so exchanged, the temporary Bonds shall be entitled to the same benefits pursuant to this Indenture as definitive Bonds authenticated and delivered hereunder.

**Section 2.09. Bonds Mutilated, Lost, Destroyed or Stolen.** If any Bond shall become mutilated, the Agency, at the expense of the Owner of such Bond, shall execute, and the Trustee shall thereupon authenticate and deliver, a new Bond of like tenor in exchange and substitution

for the Bond so mutilated, but only upon surrender to the Trustee of the Bond so mutilated. Every mutilated Bond so surrendered to the Trustee shall be canceled by it and delivered to, or upon the order of, the Agency. If any Bond shall be lost, destroyed or stolen, evidence of such loss, destruction or theft may be submitted to the Trustee and, if such evidence be satisfactory and indemnity for the Trustee and the Agency satisfactory to the Trustee shall be given, the Agency, at the expense of the Owner, shall execute, and the Trustee shall thereupon authenticate and deliver, a new Bond of like tenor in lieu of and in substitution for the Bond so lost, destroyed or stolen. The Trustee may require payment of a sum not exceeding the actual cost of preparing each new Bond issued under this Section and of the expenses which may be incurred by the Trustee in connection therewith. Any Bond issued under the provisions of this Section in lieu of any Bond alleged to be lost, destroyed or stolen shall constitute an original additional contractual obligation on the part of the Agency whether or not the Bond so alleged to be lost, destroyed or stolen be at any time enforceable by anyone, and shall be equally and proportionately entitled to the benefits of this Indenture with all other Bonds issued pursuant to this Indenture.

Notwithstanding any other provision of this Section 2.09, in lieu of delivering a new Bond for which principal has or is about to become due for a Bond which has been mutilated, lost, destroyed or stolen, the Trustee may make payment of such Bond in accordance with its terms upon receipt of the above-described indemnity.

**Section 2.10. Use of Depository.** Notwithstanding any provision of this Indenture to the contrary:

(a) At the request of the Original Purchaser, the 2011 Bonds shall be initially issued registered in the name of "Cede & Co.," as nominee of The Depository Trust Company, the depository designated by the Original Purchaser, and shall be evidenced by one 2011 Bond for each maturity of each series of the 2011 Bonds, as set forth in Section 2.02. Registered ownership of the 2011 Bonds, or any portions thereof, may not thereafter be transferred except:

(i) to any successor of The Depository Trust Company or its nominee, or of any substitute depository designated pursuant to paragraph (ii) of this subsection (a) ("substitute depository"); provided that any successor of The Depository Trust Company or substitute depository shall be qualified under any applicable laws to provide the service proposed to be provided by it;

(ii) to any substitute depository designated in a Request of the Agency, upon (i) the resignation of The Depository Trust Company or its successor (or any substitute depository or its successor) from its functions as depository or (ii) a determination by the Agency that The Depository Trust Company or its successor is no longer able to carry out its functions as depository; provided that any such substitute depository shall be qualified under any applicable laws to provide the services proposed to be provided by it; or

(iii) to any person as provided below, upon (A) the resignation of The Depository Trust Company or its successor (or any substitute depository or its successor) from its functions as depository or (B) a determination by the Agency that The Depository Trust Company or its successor is no longer able to carry out its functions as depository; provided that no substitute depository which is not objected to by the Agency and the Trustee can be obtained.

(b) In the case of any transfer pursuant to paragraph (i) or paragraph (ii) of subsection (a) of this Section 2.10, upon receipt of all Outstanding 2011 Bonds of either



series by the Trustee, together with a Request of the Agency to the Trustee, a single new 2011 Bond for each maturity of such series shall be executed and delivered, registered in the name of such successor or such substitute depository or their nominees, as the case may be, all as specified in such Written Request of the Agency. In the case of any transfer pursuant to paragraph (iii) of subsection (a) of this Section 2.10, upon receipt of all Outstanding 2011 Bonds of either series by the Trustee together with a Request of the Agency, new 2011 Bonds of the same series shall be executed and delivered in such denominations and registered in the names of such persons as are requested in a Request of the Agency provided the Trustee shall not be required to deliver such new 2011 Bonds within a period less than sixty (60) days from the date of receipt of such a Request of the Agency.

(c) In the case of partial redemption or an advance refunding of any 2011 Bonds of a series evidencing all of the principal of such series maturing in a particular year, The Depository Trust Company shall deliver such 2011 Bonds to the Trustee for cancellation and re-registration to reflect the amounts of such reduction in principal.

(d) The Agency and the Trustee shall be entitled to treat the person in whose name any 2011 Bond is registered as the absolute Owner thereof for all purposes of this Indenture and any applicable laws, notwithstanding any notice to the contrary received by the Trustee or the Agency; and the Agency and the Trustee shall have no responsibility for transmitting payments to, communication with, notifying or otherwise dealing with any beneficial owners of the 2011 Bonds. Neither the Agency nor the Trustee will have any responsibility or obligations, legal or otherwise, to the beneficial owners or to any other party including The Depository Trust Company or its successor (or substitute depository or its successor), except for the registered owner of any 2011 Bond.

(e) So long as all Outstanding 2011 Bonds are registered in the name of Cede & Co. or its registered assign, the Agency and the Trustee shall reasonably cooperate with Cede & Co., as sole registered Owner, or its registered assign in effecting payment of the principal and interest due with respect to the 2011 Bonds by arranging for payment in such manner that funds for such payments are properly identified and are made immediately available on the date they are due.

(f) So long as all Outstanding 2011 Bonds are registered in the name of Cede & Co. or its registered assign (hereinafter, for purposes of this paragraph (f), the "Owner"):

(i) All notices and payments addressed to the Owners shall contain the 2011 Bonds' CUSIP number; and

(ii) Notices to the Owner shall be forwarded in the manner set forth in the form of Blanket Issuer Letter of Representations executed by the Agency and received and accepted by The Depository Trust Company.

## ARTICLE III

### DEPOSIT AND APPLICATION OF PROCEEDS OF 2011 BONDS; ISSUANCE OF PARITY DEBT

**Section 3.01. Issuance of 2011 Bonds.** Upon the execution and delivery to the Trustee of this Indenture, the Agency shall execute and deliver to the Trustee the 2011 Series A Bonds in the aggregate initial principal amount of \_\_\_\_\_ Million \_\_\_\_\_ Hundred \_\_\_\_\_ Thousand Dollars (\$\_\_\_\_\_) and the 2011 Series B Bonds in the aggregate initial principal amount of \_\_\_\_\_ Million \_\_\_\_\_ Hundred \_\_\_\_\_ Thousand Dollars (\$\_\_\_\_\_), and the Trustee shall authenticate and deliver the 2011 Bonds to the Original Purchaser or its designee upon receipt of a Request of the Agency therefor.

**Section 3.02. Deposit and Application of Proceeds.** (a) On the Closing Date, the proceeds of sale of the 2011 Series A Bonds (being \$\_\_\_\_\_) shall be paid to the Trustee and deposited by the Trustee as follows:

(i) The Trustee shall deposit the amount of \$\_\_\_\_\_ in the Housing Projects Fund.

(ii) The Trustee shall deposit the amount of \$\_\_\_\_\_ in the Costs of Issuance Fund.

(iii) The Trustee shall deposit the amount of \$\_\_\_\_\_ in the Reserve Account.

(b) On the Closing Date, the proceeds of sale of the 2011 Series B Bonds (being \$\_\_\_\_\_) shall be paid to the Trustee and deposited by the Trustee as follows:

(i) The Trustee shall transfer the amount of \$\_\_\_\_\_ to the Escrow Bank for deposit by the Escrow Bank in the Escrow Fund created under the Escrow Agreement.

(ii) The Trustee shall deposit the amount of \$\_\_\_\_\_ in the Costs of Issuance Fund.

(iii) The Trustee shall deposit the amount of \$\_\_\_\_\_ in the Reserve Account.

(c) The Trustee may, in its discretion, establish a temporary fund or account in its books and records to facilitate such transfers.

**Section 3.03. Costs of Issuance Fund.** There is hereby established a separate fund to be known as the "Costs of Issuance Fund," which shall be held by the Trustee in trust. The Trustee shall deposit in the Costs of Issuance Fund the amounts specified in Sections 3.02(a)(ii) and (b)(ii). The moneys in the Costs of Issuance Fund shall be used and withdrawn by the Trustee from time to time to pay the Costs of Issuance upon submission of a Request of the Agency stating (a) the person to whom payment is to be made, (b) the amount to be paid, (c) the purpose for which the obligation was incurred, (d) that such payment is a proper charge against the Costs of Issuance Fund, and (e) that such amounts have not been the subject of a prior Request of the Agency. In satisfying withdrawal requests from the Costs of Issuance Fund, the Trustee shall first use amounts deposited to the Costs of Issuance Fund pursuant to Section 3.02(b)(ii) and any investment earnings thereon, and then use amounts deposited to the Costs of Issuance Fund pursuant to Section 3.02(a)(ii) and any investment earnings thereon. On the

earlier of (i) the date which is six (6) months following the Closing Date, or (ii) the date of receipt by the Trustee of a Request of the Agency therefor, all amounts (if any) remaining in the Costs of Issuance Fund shall be withdrawn therefrom by the Trustee and transferred to the Housing Projects Fund.

**Section 3.04. Housing Projects Fund.** There is hereby established a separate fund to be known as the "Housing Projects Fund," which shall be held by the Trustee. Amounts on deposit in the Housing Projects Fund shall be used solely in the manner provided by the Redevelopment Law and the Redevelopment Plan to assist in the financing of low and moderate income housing within the geographic boundaries of the City.

The moneys in the Housing Projects Fund shall be used and withdrawn by the Trustee from time to time upon submission of a Request of the Agency stating the person to whom payment is to be made, the amount to be paid, the purpose for which the obligation was incurred and that such payment is a proper charge against said fund. Each such Request of the Agency shall be sufficient evidence to the Trustee of the facts stated therein and the Trustee shall have no duty to confirm the accuracy of such facts.

The Agency shall maintain records as to the disposition of all amounts transferred to it by the Trustee pursuant to this Section 3.04, in sufficient detail as necessary to comply with the requirements of the Redevelopment Law.

**Section 3.05. Issuance of Parity Debt.** The Agency may issue or incur Parity Debt in such principal amount as shall be determined by the Agency, subject only to the following conditions:

(a) No Event of Default shall have occurred and be continuing, and the Agency shall otherwise be in compliance with all covenants set forth in this Indenture.

(b) The Agency shall provide to the Trustee a certificate or opinion of an Independent Redevelopment Consultant showing:

(i) for the current and each future Bond Year the Annual Debt Service for each such Bond Year with respect to all Bonds and Parity Bonds to be outstanding following the issuance of the Parity Bonds; and

(ii) the Housing Tax Increment Revenues to be received by the Agency in each Fiscal Year during the term of the Bonds and the Parity Bonds to be issued, assuming no growth in assessed value, but taking into account all Plan Limitations and other known factors which would cause a reduction in Housing Tax Increment Revenues in any future Bond Year, plus at the option of the Agency, the Additional Allowance; and

(iii) that the Housing Tax Increment Revenues referred to in (ii) above are at least equal to \_\_\_\_% of the Annual Debt Service for each Bond Year on all Bonds and Parity Bonds to be outstanding following the issuance of the Parity Bonds (excluding debt service with respect to any portion of the Parity Bonds deposited in an escrowed proceeds account as described below).

(c) Subject to paragraph (d) below, the issuance of such Parity Debt shall not cause the Agency to exceed any applicable Plan Limitations. Without limiting the generality of the foregoing, the Agency shall not issue or execute and deliver any Parity Debt in the event and to the extent that either (i) the sum of the aggregate amount of debt service on all outstanding obligations of the Agency payable from Housing Tax

Increment Revenues, including such Parity Debt, exceeds the aggregate amount of Housing Tax Increment Revenues which are eligible to be allocated and paid to the Agency while such obligations remain outstanding, or (ii) the aggregate principal amount of all outstanding obligations of the Agency, including such Parity Debt, exceeds any applicable limit in the Redevelopment Plan on the aggregate principal amount of indebtedness payable from Housing Tax Increment Revenues which the Agency is permitted to have outstanding at any one time.

(d) In computing the Annual Debt Service on the Bonds and the Parity Debt for purposes of paragraph (b) above, and the debt service for purposes of paragraph (c) above, if interest on any Bonds or the Parity Debt is payable at a variable rate or is otherwise incapable of determination, (A) if the Agency has entered into a variable to fixed swap arrangement with respect to such Bonds or Parity Debt the term of which extends for the term of such Bonds or Parity Debt and payments by the counterparty on the swap arrangement are guaranteed or insured by an entity whose unsecured debt obligations are rated in the highest rating category by Moody's or S&P, the annual debt service due by the Agency under the swap arrangement shall be used rather than the annual debt service on such Bonds or Parity Debt, or (B) the Bonds or Parity Debt shall be assumed to bear interest at a fixed rate equal to the maximum interest rate permitted to be borne by the Bonds or such Parity Debt under the applicable instrument pursuant to which such Bonds or Parity Bonds have been or are proposed to be issued.

(e) The related Parity Debt Instrument shall provide that:

(i) Interest on such Parity Debt shall be payable on March 1 and September 1 in each year in which interest is payable on such Parity Debt except the first twelve-month period, during which interest may be payable on any March 1 or September 1 and provided that (A) there shall be no requirement that such Parity Debt pay interest on a current basis and (B) the interest rate on all Parity Debt shall be fixed for the term of the Parity Debt;

(ii) The principal of such Parity Debt shall be payable on September 1 in any year in which principal is payable; and

(iii) Money (and/or a Qualified Reserve Account Credit Instrument) shall be deposited in the Reserve Account in an amount such that the amount in the Reserve Account is equal to the Reserve Requirement to be in effect immediately following the issuance of the Parity Debt.

(f) The related Parity Debt Instrument shall designate, if applicable, that the Parity Debt or any series thereof authorized thereby are Tax-Exempt Bonds.

(g) The Agency shall deliver to the Trustee a Certificate of the Agency certifying that the conditions precedent to the issuance of such Parity Debt set forth in subsections (a), (b), (c), (e) and, if applicable, (f) above have been satisfied.

For the purposes of the issuance of Parity Bonds, Annual Debt Service shall not include the principal and interest attributable to the portion of any Parity Bonds which are deposited in an escrow fund held by an escrow agent, provided that the instrument pursuant to which the Parity Bonds have been issued provides that: (A) such proceeds in the escrow fund shall be deposited or invested with or secured by an institution rated "A" by S&P or "A" by Moody's at a rate of interest which, together with amounts made available by the Agency from bond proceeds or otherwise, is at least sufficient to pay Annual Debt Service on said portion of the principal of the Parity Bonds; (B) moneys may be transferred from said escrow fund only if the

Parity Bonds test set forth in subsection (b)(iii) above is met with respect to the amounts to be transferred from the escrow fund; and (C) Parity Bonds shall be redeemed from moneys remaining on deposit in said escrow fund at the expiration of a specified escrow period in such manner as may be determined by the Agency.

Notwithstanding the foregoing, the Agency may issue or incur Refunding Debt in such principal amount as shall be determined by the Agency so long as the conditions set forth in subsections (a), (c), (e) and, if applicable, (f) above are met, and the Agency delivers to the Trustee a Certificate of the Agency certifying that such conditions precedent to the issuance of such Refunding Debt set forth in subsections (a), (c), (e) and, if applicable, (f) above have been met and such Refunding Debt is otherwise in accordance with the definition of Refunding Debt.

**Section 3.06. Issuance of Subordinate Debt.** From time to time the Agency may issue or incur Subordinate Debt in such principal amount as shall be determined by the Agency; provided that (a) the Agency shall be in compliance with all of its covenants set forth in this Indenture and any Parity Debt Instruments, (b) the issuance of such Subordinate Debt (after taking into account the Bonds and all other obligations of the Agency payable from Housing Tax Increment Revenues, as well as all other bonded indebtedness of the Agency) shall not cause the Agency to exceed any applicable Plan Limitations, and (c) the Agency will at all times that the Bonds are Outstanding have sufficient capacity to receive Housing Tax Increment Revenues in an amount at least equal to the remaining Debt Service on the Bonds as well as all fixed debt service or other obligations of the Agency (including such Subordinate Debt) payable from Housing Tax Increment Revenues.

**Section 3.07. Validity of Bonds.** The validity of the authorization and issuance of the Bonds shall not be dependent upon the Redevelopment Project or upon the performance by any person of its obligation with respect to the Redevelopment Project.

## ARTICLE IV

### SECURITY OF BONDS; FLOW OF FUNDS; INVESTMENTS

**Section 4.01. Security of Bonds; Equal Security.** The Bonds shall be secured by a pledge of and lien on all of the Housing Tax Increment Revenues, without preference or priority for series, issue, number, dated date, sale date, date of execution or date of delivery, subject only to the prior pledge of the Housing Tax Increment Revenues with respect to the Senior Debt and any Senior Refunding Debt. The Bonds shall be additionally secured by a first and exclusive pledge of and lien upon all of the moneys in the Reserve Account, the Pledged Housing Set-Aside Fund, the Debt Service Fund, the Interest Account, the Principal Account, the Sinking Account and the Redemption Account. Except for the Housing Tax Increment Revenues and amounts in the funds and accounts created hereunder including amounts in the Reserve Account and the Pledged Housing Set-Aside Fund, no funds or properties of the Agency shall be pledged to, or otherwise liable for, the payment of principal of or interest or premium (if any) on the Bonds.

In consideration of the acceptance of the Bonds by those who shall hold the same from time to time, this Indenture shall be deemed to be and shall constitute a contract between the Agency and the Owners from time to time of the Bonds, and the covenants and agreements herein set forth to be performed on behalf of the Agency shall be for the equal and proportionate benefit, security and protection of all Owners of the Bonds without preference, priority or distinction as to security or otherwise of any of the Bonds over any of the others by reason of the number or date thereof or the time of sale, execution and delivery thereof, or otherwise for any cause whatsoever, except as expressly provided therein or herein.

**Section 4.02. Pledged Housing Set-Aside Fund; Deposit of Housing Tax Increment Revenues.** There is established a special fund to be known as the "Pledged Housing Set-Aside Fund", which is held by the Agency. The Agency shall deposit the Housing Tax Increment Revenues received in any Bond Year, after satisfying the requirements of the Senior Debt and any Senior Refunding Debt for such Bond Year, in the Pledged Housing Set-Aside Fund promptly upon receipt thereof by the Agency, until such time (if any) during any Bond Year as the amounts on deposit in the Pledged Housing Set-Aside Fund equal the aggregate amounts required to be transferred pursuant to Section 4.03 of this Indenture in the Bond Year; and (except as may be otherwise provided in Section 5.14 or in any Parity Debt Instruments) any Housing Tax Increment Revenues received during any such Bond Year in excess of such amounts shall be released from the pledge and lien hereunder and may be used for any lawful purposes of the Agency.

Prior to the payment in full of the principal of and interest and redemption premium (if any) on the Bonds and the payment in full of all other amounts payable hereunder and under any Parity Debt Instruments, the Agency shall not have any beneficial right or interest in the moneys on deposit in the Pledged Housing Set-Aside Fund, except only as provided in this Indenture and in any Parity Debt Instruments, and such moneys shall be used and applied as set forth herein and in any Parity Debt Instruments.

**Section 4.03. Debt Service Fund; Transfer of Amounts to Trustee.** There is hereby established a special trust fund to be known as the "Debt Service Fund", which shall be held by the Trustee hereunder in trust. The Agency shall withdraw from the Pledged Housing Set-Aside Fund and transfer to the Trustee amounts required to meet the Agency's obligations under this Section 4.03. Moneys so transferred by the Agency to the Trustee shall be in the following amounts at the following times, for deposit by the Trustee in the following respective



special accounts within the Debt Service Fund, which accounts are hereby established with the Trustee, in the following order of priority:

(a) Interest Account. On or before each date on which interest on the Bonds becomes due and payable, the Agency shall withdraw from the Pledged Housing Set-Aside Fund and transfer to the Trustee for deposit in the Interest Account an amount which, when added to the amount then on deposit in the Interest Account, will be equal to the aggregate amount of the interest becoming due and payable on the Outstanding Bonds on such date. All moneys in the Interest Account shall be used and withdrawn by the Trustee solely for the purpose of paying the interest on the Bonds as it shall become due and payable.

(b) Principal Account; Sinking Account. On or before each date on which principal of the Bonds becomes due and payable at maturity or date on which any Outstanding Term Bonds become subject to mandatory Sinking Account redemption, the Agency shall withdraw from the Pledged Housing Set-Aside Fund and transfer to the Trustee for deposit (i) in the Principal Account an amount which, when added to the amount then on deposit in the Principal Account, will be equal to the amount of principal coming due and payable on such date on the Outstanding Bonds; and (ii) in the Sinking Account an amount which, when added to the amount then contained in the Sinking Account, will be equal to the aggregate principal amount of the Term Bonds subject to mandatory Sinking Account redemption on such date. In the event that the amount then in the Pledged Housing Set-Aside Fund, following the transfer described in the preceding subparagraph (a), is not sufficient to fully fund the amounts described in the preceding clauses (i) and (ii), the Trustee shall deposit the available funds in the Pledged Housing Set-Aside Fund pro rata to the Principal Account and the Sinking Account, based on the aggregate principal and Sinking Account payments then due on the Bonds. All moneys in the Principal Account shall be used and withdrawn by the Trustee solely for the purpose of paying the principal of the Bonds upon the maturity thereof. All moneys on deposit in the Sinking Account shall be used and withdrawn by the Trustee for the sole purpose of paying the principal of the Term Bonds as it shall become due and payable upon the mandatory Sinking Account redemption thereof.

(c) [intentionally omitted].

(d) Reserve Account. In the event that the aggregate amount on deposit in the Reserve Account at any time becomes less than the Reserve Requirement, the Trustee (to the extent known to it) shall promptly notify the Agency of such fact. Promptly upon receipt of any such notice, the Agency shall transfer to the Trustee from the Pledged Housing Set-Aside Fund to the Reserve Account an amount sufficient to maintain an aggregate amount equal to the Reserve Requirement on deposit in the Reserve Account. Amounts in the Reserve Account shall be used and withdrawn by the Trustee for the purpose of making transfers to (i) the Interest Account, and (ii) the Principal Account and the Sinking Account, in such order of priority (pro rata to the Principal Account and the Sinking Account, based upon the principal and sinking account payments then due, if the amount then in the Reserve Account, after satisfying any deficiency in the Interest Account, is not sufficient to fully satisfy any then deficiencies in the Principal Account and the Sinking Account), on any date which the principal of or interest on the Bonds becomes due and payable hereunder, in the event of any deficiency at any time in any of such accounts, or at any time for the retirement of all the Bonds then Outstanding. If, as of any Interest Payment Date, no Event of Default shall have occurred and then be continuing and the aggregate amount on deposit in the Reserve Account is in excess of the then Reserve Requirement, the Trustee shall withdraw the excess amount and



transfer the excess amount to the Interest Account to be used for the purposes of such account.

The Agency shall have the right at any time to release any funds from the Reserve Account, in whole or in part, by tendering to the Trustee a Qualified Reserve Account Credit Instrument. Upon tender of such item to the Trustee, and upon delivery by the Agency to the Trustee of written calculation of the amount permitted to be released from the Reserve Account (upon which calculation the Trustee may conclusively rely), the Trustee shall transfer the amount to be released to the Agency free and clear of the lien of this Indenture. The Trustee shall comply with all documentation relating to a Qualified Reserve Account Credit Instrument as shall be required to maintain such Qualified Reserve Account Credit Instrument in full force and effect and as shall be required to receive payments thereunder in the event and to the extent required to make any payment when and as required under this subsection (d).

At least fifteen (15) days prior to the expiration of any Qualified Reserve Account Credit Instrument, the Agency shall be obligated either (i) to replace such Qualified Reserve Account Credit Instrument with a new Qualified Reserve Account Credit Instrument, or (ii) to deposit or cause to be deposited with the Trustee for deposit to the Reserve Account an amount of funds such that the aggregate amount on deposit in the Reserve Account is equal to the Reserve Requirement (without taking into account such expiring Qualified Reserve Fund Credit Instrument). In the event that the Agency shall fail to take action as specified in clause (i) or (ii) of the preceding sentence, the Trustee shall, prior to the expiration thereof, draw upon the Qualified Reserve Account Credit Instrument in full and deposit the proceeds of such draw in the Reserve Account.

In the event that the Reserve Requirement shall at any time be maintained in the Reserve Account in the form of a combination of cash and a Qualified Reserve Account Credit Instrument, the Trustee shall apply the amount of such cash to make any payment required to be made from the Reserve Account before the Trustee shall draw any moneys under such Qualified Reserve Account Credit Instrument for such purpose. In the event that the Trustee shall at any time draw funds under a Qualified Reserve Account Credit Instrument to make any payment then required to be made from the Reserve Account, the Housing Tax Increment Revenues thereafter received by the Trustee, to the extent remaining after making the other deposits (if any) then required to be made pursuant to Section 4.03(a) and (b), shall be used to reinstate the Qualified Reserve Account Credit Instrument. If there is more than one Qualified Reserve Account Credit Instrument held in a subaccount of the Reserve Account, any draw or reinstatement shall be made upon them pro rata.

Subaccounts may be established in the Reserve Account for the purpose of holding the proceeds of separate issues of Parity Debt in conformity with applicable provisions of the Tax Code.

(e) Redemption Account. On or before each date on which Bonds are subject to redemption, other than mandatory Sinking Account redemption of Term Bonds, the Agency shall withdraw from the Pledged Housing Set-Aside Fund and transfer to the Trustee for deposit in the Redemption Account an amount required to pay the principal of and premium, if any, on the Bonds to be so redeemed on such date taking into account any funds then on deposit in the Redemption Account available for such purpose. All moneys in the Redemption Account shall be used and withdrawn by the Trustee solely for the purpose of paying the principal of and premium, if any, on the Bonds upon the redemption thereof, on the date set for such redemption, other than mandatory Sinking Account redemption of Term Bonds.

**Section 4.04. Investment By Trustee of Moneys in Funds.** Moneys in the Debt Service Fund, the Interest Account, the Principal Account, the Sinking Account, the Reserve Account, the Redemption Account, the Housing Projects Fund (including the accounts therein) and the Costs of Issuance Fund shall be invested by the Trustee in Permitted Investments specified in the Request of the Agency delivered to the Trustee at least two (2) Business Days in advance of the making of such investments; *provided, however*, that in the absence of any such direction from the Agency, the Trustee shall invest any such moneys solely in Permitted Investments described in clause (i) of the definition thereof. Moneys in the Pledged Housing Set-Aside Fund shall be invested by the Agency in any obligations in which the Agency is legally authorized to invest funds within its control.

Obligations purchased as an investment of moneys in any fund or account shall be deemed to be part of such fund or account. Whenever in this Indenture any moneys are required to be transferred by the Agency to the Trustee, such transfer may be accomplished by transferring a like amount of Permitted Investments. All interest or gain derived from the investment of amounts in any of the funds or accounts held by the Trustee hereunder shall be retained in the respective fund or account from which such investment was made; *provided, however*, that (i) all interest or gain from the investment of amounts in the Reserve Account, to the extent not required to cause the amount in the Reserve Account to equal the Reserve Requirement, shall be deposited by the Trustee to the Interest Account, and (ii) so long as no Event of Default shall have occurred and be continuing, all interest or gain on investments of amounts in the Pledged Housing Set-Aside Fund shall be released from the pledge hereof and used by the Agency for any lawful purposes. For purposes of acquiring any investments hereunder, the Trustee may commingle funds held by it hereunder upon receipt by the Trustee of the Request of the Agency. The Trustee may act as principal or agent in the acquisition or disposition of any investment and may impose its customary charges therefor. The Trustee shall incur no liability for losses arising from any investments made pursuant to this Section.

The Agency acknowledges that to the extent regulations of the Comptroller of the Currency or other applicable regulatory entity grant the Agency the right to receive brokerage confirmations of security transactions as they occur, the Agency specifically waives receipt of such confirmations to the extent permitted by law. The Trustee will furnish the Agency periodic cash transaction statements which shall include detail for all investment transactions made by the Trustee hereunder.

The Trustee may make any investments hereunder through its own bond or investment department or trust investment department, or those of its parent or any affiliate. The Trustee or any of its affiliates may act as sponsor, advisor or manager in connection with any investments made by the Trustee hereunder.

**Section 4.05. Valuation and Disposition of Investments.**

(a) Except as otherwise provided in subsection (b) of this Section, all investments of amounts deposited in any fund or account created by or pursuant to this Indenture, or otherwise containing gross proceeds of the Tax-Exempt Bonds (within the meaning of section 148 of the Tax Code) shall be acquired, disposed of, and valued (as of the date that valuation is required by this Indenture or the Tax Code) at Fair Market Value.

(b) Amounts in all funds and accounts shall be valued by the Trustee at least semi-annually fifteen days prior to each Interest Payment Date, provided as to any such valuation made by the Trustee, such valuation shall be at the market value of such investments and the Trustee may utilize computerized securities pricing services that may be available to it, including those available through its regular accounting system.

(c) For purposes of computations required under the Tax Code, investments in funds or accounts (or portions thereof) that are subject to a yield restriction under applicable provisions of the Tax Code and (unless valuation is undertaken at least annually) investments in the Reserve Account shall be valued at their present value (within the meaning of section 148 of the Tax Code).

(d) The Trustee shall have no responsibility to determine Fair Market Value or present value of any Permitted Investment, and may rely upon any determination made by or on behalf of the Agency. This Section 4.05(d) shall in no way limit the Trustee's obligations under Section 6.07 hereof.

## ARTICLE V

### OTHER COVENANTS OF THE AGENCY

**Section 5.01. Punctual Payment.** The Agency shall punctually pay or cause to be paid the principal of and interest on the Bonds, together with any redemption premiums thereon, in strict conformity with the terms of this Indenture, and it shall faithfully observe and perform all of the conditions, covenants and requirements of this Indenture.

**Section 5.02. Limitation on Superior Debt.** The Agency hereby covenants that, so long as the Bonds remain unpaid, the Agency shall not issue any bonds, notes or other obligations, enter into any agreement or otherwise incur any loans, advances or indebtedness, which is in any case secured by a lien on all or any part of the Housing Tax Increment Revenues which is superior to the lien established hereunder for the security of the Bonds, excepting only Senior Refunding Debt. The Agency hereby covenants that, so long as the Bonds remain unpaid, the Agency shall not issue any bonds, notes or other obligations, enter into any agreement or otherwise incur any loans, advances or indebtedness, which is in any case secured by a lien on all or any part of the Housing Tax Increment Revenues which is on a parity with the lien established hereunder for the security of the Bonds, excepting only Parity Debt. Nothing herein is intended or shall be construed in any way to prohibit or impose any limitations upon the issuance by the Agency of (a) Senior Refunding Debt, or (b) subject to the provisions of Section 3.06, loans, bonds, notes, advances or other indebtedness which are unsecured or which are secured by a junior lien on the Housing Tax Increment Revenues.

**Section 5.03. Payment of Claims.** The Agency will pay and discharge, or cause to be paid and discharged, any and all lawful claims for labor, materials or supplies which, if unpaid, might become a lien or charge upon the properties owned by the Agency or upon the Housing Tax Increment Revenues or any part thereof, or upon any funds in the hands of the Trustee, or which might impair the security of the Bonds. Nothing herein contained shall require the Agency to make any such payment so long as the Agency in good faith shall contest the validity of said claims.

**Section 5.04. Books and Accounts.** The Agency will keep, or cause to be kept, proper books of record and accounts, separate from all other records and accounts of the Agency and the City, in which complete and correct entries shall be made of all transactions relating to the Housing Tax Increment Revenues, the Housing Projects Fund and the Pledged Housing Set-Aside Fund. Such books of record and accounts shall at all times during business hours be subject, upon prior written request, to the reasonable inspection of the Trustee and the Owners of any Bonds then Outstanding, or their representatives authorized in writing. The Trustee shall have no duty to review such books of record and account.

**Section 5.05. Protection of Security and Rights.** The Agency will preserve and protect the security of the Bonds and the rights of the Trustee and the Bond Owners. From and after the Closing Date, the Bonds shall be incontestable by the Agency.

**Section 5.06. Payments of Taxes and Other Charges.** The Agency will pay and discharge, or cause to be paid and discharged, all taxes, service charges, assessments and other governmental charges which may hereafter be lawfully imposed upon the Agency or the properties then owned by the Agency in the project area created by the Redevelopment Plan, when the same shall become due. Nothing herein contained shall require the Agency to make any such payment so long as the Agency in good faith shall contest the validity of said taxes, assessments or charges. The Agency will duly observe and conform with all valid requirements of any governmental authority relative to the Redevelopment Project or any part thereof.

**Section 5.07. Extension of Payment.** The Agency will not, directly or indirectly, extend or consent to the extension of the time for the payment of any Bond or claim for interest on any of the Bonds and will not, directly or indirectly, be a party to or approve any such arrangement by purchasing or funding the Bonds or claims for interest in any other manner. In case the maturity of any such Bond or claim for interest shall be extended or funded, whether or not with the consent of the Agency, such Bond or claim for interest so extended or funded shall not be entitled, in case of default hereunder, to the benefits of this Indenture, except subject to the prior payment in full of the principal of all of the Bonds then Outstanding and of all claims for interest which shall not have been so extended or funded.

**Section 5.08. Disposition of Property.** The Agency will not participate in the disposition of any land or real property in the Project Area to anyone which will result in such property becoming exempt from taxation because of public ownership or use or otherwise (except property dedicated for public right-of-way and except property planned for public ownership or use by the Redevelopment Plan in effect on the date of this Indenture) so that such disposition shall, when taken together with other such dispositions, aggregate more than ten percent (10%) of the land area in the Redevelopment Project (calculating such ten percent against land in the Project Area owned by private parties as of the Closing Date) unless such disposition is permitted as hereinafter provided in this Section 5.08. If the Agency proposes to participate in such a disposition, it shall thereupon appoint an Independent Redevelopment Consultant to report on the effect of said proposed disposition. If the Report of the Independent Redevelopment Consultant concludes that the security of the Bonds and the rights of the Bond Owners and the Trustee hereunder will not be materially impaired by said proposed disposition, the Agency may thereafter make such disposition. If said Report concludes that such security will be materially impaired by said proposed disposition, the Agency shall disapprove and shall not make said proposed disposition.

**Section 5.09. Maintenance of Housing Tax Increment Revenues.** The Agency shall comply with all requirements of the Redevelopment Law to insure the allocation and payment to it of the Housing Tax Increment Revenues, including without limitation the timely filing of any necessary statements of indebtedness with appropriate officials of the County and (in the case of supplemental revenues and other amounts payable by the State) appropriate officials of the State. Without limiting the generality of the foregoing, the Agency covenants that it shall deposit or cause to be deposited in the Low and Moderate Income Housing Fund established pursuant to Section 33334.3 of the Redevelopment Law, all amounts when, as and if required to be deposited therein pursuant to the Redevelopment Law.

The Agency shall not enter into any agreement with the County or any other governmental unit, or modify the Redevelopment Plan in any manner, which would have the effect of reducing the amount of Housing Tax Increment Revenues available to the Agency under the Redevelopment Plan for payment of the Bonds as of the Closing Date, unless in the written opinion of an Independent Redevelopment Consultant filed with the Trustee such reduction will not adversely affect the interests hereunder of or the security granted hereunder to the owners of the Bonds.

The Agency agrees not to make any findings of the character described in subparagraphs (1)(A), (2)(A) or (3)(A) of Section 33334.2(a) of the Redevelopment Law with the purpose or effect of reducing the percentage of taxes allocated to the Agency pursuant to Section 33670 of the Redevelopment Law that are required by Sections 33334.2(a) and 33334.6(a) to be deposited in the Agency's Low and Moderate Income Housing Fund described in Section 33334.3 of the Redevelopment Law.

**Section 5.10. Payment of Expenses; Indemnification.** The Agency shall pay to the Trustee all compensation for all services rendered under this Indenture following the receipt of a statement therefor, including but not limited to all reasonable expenses, charges, legal and consulting fees and other disbursements and those of its attorneys, agents and employees, incurred in and about the performance of its powers and duties hereunder.

The Agency further covenants and agrees to indemnify and save the Trustee and its officers, directors, agents and employees, harmless against any losses, expenses and liabilities which it may incur arising out of or in the exercise and performance of its powers and duties hereunder, including the costs and expenses of defending against any claim of liability, but excluding any and all losses, expenses and liabilities which are due to the negligence or intentional misconduct of the Trustee, its officers, directors, agents or employees. The obligations of the Agency under this Section shall survive the resignation or removal of the Trustee under this Indenture and payment of the Bonds and the discharge of this Indenture.

**Section 5.11. Tax Covenants Relating to Tax-Exempt Bonds.**

(a) Federal Guarantee Prohibition. The Agency shall not take any action or permit or suffer any action to be taken if the result of the same would be to cause the Tax-Exempt Bonds to be “federally guaranteed” within the meaning of section 149(b) of the Tax Code.

(b) No Arbitrage. The Agency shall not take, or permit or suffer to be taken by the Trustee or otherwise, any action with respect to the Tax-Exempt Bond proceeds which, if such action had been reasonably expected to have been taken, or had been deliberately and intentionally taken, on the Closing Date for the related Bonds, would have caused the Tax-Exempt Bonds to be “arbitrage bonds” within the meaning of section 148 of the Tax Code.

(c) Private Activity Bond Limitation. The Agency shall assure that the proceeds of the Tax-Exempt Bonds are not so used as to cause the Tax-Exempt Bonds to satisfy the private business tests of section 141(b) of the Tax Code or the private loan financing test of section 141(c) of the Tax Code.

(d) Rebate Requirement. The Agency shall take any and all actions necessary to assure compliance with section 148(f) of the Tax Code, relating to the rebate of excess investment earnings, if any, to the federal government, to the extent that such section is applicable to the Tax-Exempt Bonds.

(e) Maintenance of Tax-Exemption. The Agency shall take all actions necessary to assure the exclusion of interest on the Tax-Exempt Bonds from the gross income of the Owners of the Tax-Exempt Bonds to the same extent as such interest is permitted to be excluded from gross income under the Tax Code as in effect on the date of issuance of the Tax-Exempt Bonds.

**Section 5.12. Continuing Disclosure.** The Agency hereby covenants and agrees that it will comply with and carry out all of the provisions of the Continuing Disclosure Certificate. Notwithstanding any other provision of this Indenture, failure of the Agency to comply with the Continuing Disclosure Certificate shall not be considered an Event of Default; however, the Trustee, at the written request of any Participating Underwriter or the Owners of at least 25% aggregate principal amount of Outstanding 2011 Bonds, shall (but only to the extent it has been indemnified to its satisfaction from any cost, claim, liability or expense, including, without limitation fees and expenses of its attorneys) or any Owner of any of the 2011 Bonds may, take such actions as may be necessary and appropriate to compel performance, including seeking mandate or specific performance by court order.



**Section 5.13. Further Assurances.** The Agency will adopt, make, execute and deliver any and all such further resolutions, instruments and assurances as may be reasonably necessary or proper to carry out the intention or to facilitate the performance of this Indenture, and for the better assuring and confirming unto the Owners the rights and benefits provided in this Indenture.

**Section 5.14. Annual Review of Housing Tax Increment Revenues.** The Agency shall annually review the total amount of Housing Tax Increment Revenues remaining available to be received by the Agency under the Redevelopment Plan's cumulative tax increment limitations, as well as future cumulative annual debt service. If remaining Housing Tax Increment Revenues allocable within the Redevelopment Plan's cumulative tax increment limit are less than one hundred five percent (105%) of all future debt service on the Bonds and any other obligations of the Agency payable from Tax Increment Revenues (including the Senior Debt and any Senior Refunding Debt), all Housing Tax Increment Revenues not needed to pay current or any past due debt service on any Agency obligations or to replenish the Reserve Account to the Reserve Requirement shall be deposited into a Trustee-held escrow account and invested in Defeasance Securities. Such fund must be used only to pay debt service on the Bonds and to pay any Senior Debt and Senior Refunding Debt, or to redeem or prepay, as the case may be, the Bonds or such Senior Debt and Senior Refunding Debt. The Agency shall include with its annual statement of indebtedness a statement to the effect that the foregoing calculations have been made, along with the results of the calculations.

In complying with the foregoing provisions of this Section 5.14, the Agency shall at all times proceed in a manner that takes into account, and does not violate, its obligations under Section 5.11 of the Indenture of Trust, dated as of October 1, 2003, between the Agency and Union Bank, N.A. (formerly known as Union Bank of California, N.A.), providing for the issuance of the Series 2003C Bonds and the Series 2003D Bonds as described therein.

**Section 5.15. Reservation of Funds for SERAF Payment.** The Agency shall maintain: sufficient funds to make any required payment due for Fiscal Year 2010-11 to the Alameda County Supplemental Education Revenue Augmentation Fund, until such time as such payment is made by the Agency or a court of competent jurisdiction finds, in a final nonappealable judgment, that the Agency is not required to make such payment.

**Section 5.16. Use of Proceeds of Prior Bond Issues for Housing Purposes.** The Agency hereby represents that no proceeds of any debt outstanding for any of the Merged Project Area, secured by a pledge of or lien on any portion of the Housing Tax Increment Revenues on a basis senior to or on a parity with the pledge of and lien on Housing Tax Increment Revenues under Section 4.01, have been used for or are otherwise attributable to housing purposes, except for the Senior Debt.

**Section 5.17. Retirement of Prior Obligations.** The Agency hereby covenants that it shall cause the amounts on deposit under the Escrow Agreement to be applied to the discharge of all of the 1992 Loan Agreement. To that end, the Trustee shall transfer a portion of the proceeds of the Bonds, as described in Section 3.02(b)(i), to the Escrow Bank for investment and application as provided in the Escrow Agreement, and the Agency hereby covenants that any indebtedness represented by the 1992 Loan Agreement will be fully discharged on the Closing Date.



## ARTICLE VI

### THE TRUSTEE

#### **Section 6.01. Duties, Immunities and Liabilities of Trustee.**

(a) The Trustee shall, prior to the occurrence of an Event of Default, and after the curing or waiver of all Events of Default which may have occurred, perform such duties and only such duties as are specifically set forth in this Indenture and no implied covenants shall be read into this Indenture against the Trustee. The Trustee shall, during the existence of any Event of Default (which has not been cured or waived), exercise such of the rights and powers vested in it by this Indenture, and use the same degree of care and skill in their exercise, as a prudent person would exercise or use in the conduct of such person's own affairs.

(b) The Agency may remove the Trustee at any time, and shall remove the Trustee (i) if at any time requested to do so by an instrument or concurrent instruments in writing signed by the Owners of not less than sixty percent (60%) in aggregate principal amount of the Bonds then Outstanding (or their attorneys duly authorized in writing), or (ii) if at any time the Trustee shall cease to be eligible in accordance with subsection (e) of this Section, or shall become incapable of acting, or shall be adjudged a bankrupt or insolvent, or a receiver of the Trustee or its property shall be appointed, or any public officer shall take control or charge of the Trustee or of its property or affairs for the purpose of rehabilitation, conservation or liquidation. In each case such removal shall be accomplished by the giving of 30 days' written notice of such removal by the Agency to the Trustee, whereupon the Agency shall appoint a successor Trustee by an instrument in writing.

(c) The Trustee may at any time resign by giving at least 60 days' prior written notice of such resignation to the Agency and by giving the Owners notice of such resignation by first-class mail, postage prepaid, at their respective addresses shown on the Registration Books. Upon receiving such notice of resignation, the Agency shall promptly appoint a successor Trustee by an instrument in writing.

(d) Any removal or resignation of the Trustee and appointment of a successor Trustee shall become effective only upon acceptance of appointment by the successor Trustee. If no successor Trustee shall have been appointed and have accepted appointment within forty-five (45) days following giving notice of removal or notice of resignation as aforesaid, the resigning Trustee or any Owner (on behalf of himself and all other Owners) may petition any court of competent jurisdiction for the appointment of a successor Trustee, and such court may thereupon, after such notice (if any) as it may deem proper, appoint such successor Trustee. Any successor Trustee appointed under this Indenture shall signify its acceptance of such appointment by executing and delivering to the Agency and to its predecessor Trustee a written acceptance thereof, and to the predecessor Trustee an instrument indemnifying the predecessor Trustee for any costs or claims arising during the time the successor Trustee serves as Trustee hereunder, and after payment by the Agency of all unpaid fees and expenses of the predecessor Trustee, such successor Trustee, without any further act, deed or conveyance, shall become vested with all the moneys, estates, properties, rights, powers, trusts, duties and obligations of such predecessor Trustee, with like effect as if originally named Trustee herein; but, nevertheless, upon the receipt by the predecessor Trustee of the Request of the Agency or the request of the successor Trustee, such predecessor Trustee shall execute and deliver any and all instruments of conveyance or further assurance and do such other things as may reasonably be required for more fully and certainly vesting in and confirming to such successor Trustee all the right, title and interest of such predecessor Trustee in and to any property held by it under this Indenture and shall pay over, transfer, assign and deliver to the successor Trustee any money or

other property subject to the trusts and conditions herein set forth. Upon request of the successor Trustee, the Agency shall execute and deliver any and all instruments as may be reasonably required for more fully and certainly vesting in and confirming to such successor Trustee all such moneys, estates, properties, rights, powers, trusts, duties and obligations. Upon acceptance of appointment by a successor Trustee as provided in this subsection, the Agency shall mail or cause the successor Trustee to mail, by first-class mail, postage prepaid, a notice of the succession of such Trustee to the trusts hereunder to the Owners at the addresses shown on the Registration Books. If the Agency fails to mail such notice within fifteen (15) days after acceptance of appointment by the successor Trustee, the successor Trustee shall cause such notice to be mailed at the expense of the Agency.

(e) Any Trustee appointed under the provisions of this Section in succession to the Trustee shall (i) be a trust company or bank in good standing located in or organized under the laws of the State of California, or located in or organized under the laws of any other state, (ii) be authorized to exercise trust powers, (iii) have (or in the case of a corporation or trust company, included in a bank holding company system, the related bank holding company shall have) a combined capital and surplus of at least Fifty Million Dollars (\$50,000,000), and (iv) be subject to supervision or examination by federal or state authority. If such bank or trust company publishes a report of condition at least annually, pursuant to law or to the requirements of any supervising or examining authority above referred to, then for the purpose of this subsection the combined capital and surplus of such bank or trust company shall be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published. In case at any time the Trustee shall cease to be eligible in accordance with the provisions of this subsection (e), the Trustee shall resign immediately in the manner and with the effect specified in this Section and shall assist the Agency in a transfer of the trust estate hereunder to an institution eligible to serve as Trustee hereunder, without cost to the Agency.

**Section 6.02. Merger or Consolidation.** Any bank or trust company into which the Trustee may be merged or converted or with which either of them may be consolidated or any bank or trust company resulting from any merger, conversion or consolidation to which it shall be a party or any bank or trust company to which the Trustee may sell or transfer all or substantially all of its corporate trust business, provided such bank or trust company shall be eligible under subsection (e) of Section 6.01, shall be the successor to such Trustee without the execution or filing of any paper or any further act, anything herein to the contrary notwithstanding.

### **Section 6.03. Liability of Trustee.**

(a) The recitals of facts herein and in the Bonds contained shall be taken as statements of the Agency, and the Trustee shall not assume responsibility for the correctness of the same, nor make any representations as to the validity or sufficiency of this Indenture or of the Bonds nor shall incur any responsibility in respect thereof, other than as expressly stated herein. The Trustee shall, however, be responsible for its representations contained in its certificate of authentication on the Bonds. The Trustee shall not be liable in connection with the performance of its duties hereunder, except for its own negligence or willful misconduct. The Trustee shall not be liable for the acts of any agents of the Trustee selected by it with due care. The Trustee may become the Owner of any Bonds with the same rights it would have if it were not Trustee and, to the extent permitted by law, may act as depository for and permit any of its officers or directors to act as a member of, or in any other capacity with respect to, any committee formed to protect the rights of the Owners, whether or not such committee shall represent the Owners of a majority in principal amount of the Bonds then Outstanding.

(b) The Trustee shall not be liable for any error of judgment made in good faith by a responsible officer.

(c) The Trustee shall not be liable with respect to any action taken or omitted to be taken by it in good faith in accordance with the direction of the Owners of not less than a majority in aggregate principal amount of the Bonds at the time Outstanding relating to the time, method and place of conducting any proceeding for any remedy available to the Trustee, or exercising any trust or power conferred upon the Trustee under this Indenture.

(d) The Trustee shall not be liable for any action taken by it in good faith and believed by it to be authorized or within the discretion or rights or powers conferred upon it by this Indenture, except for actions arising from the negligence or willful misconduct of the Trustee. The permissive right of the Trustee to do things enumerated hereunder shall not be construed as a mandatory duty.

(e) The Trustee shall not be deemed to have knowledge of any Event of Default hereunder unless and until it shall have actual knowledge thereof, or shall have received written notice thereof at its Office. Except as otherwise expressly provided herein, the Trustee shall not be bound to ascertain or inquire as to the performance or observance of any of the terms, conditions, covenants or agreements herein or of any of the documents executed in connection with the Bonds, or as to the existence of an Event of Default hereunder or thereunder. The Trustee shall not be responsible for the validity or effectiveness of any collateral given to or held by it.

(f) No provision in this Indenture shall require the Trustee to risk or expend its own funds or otherwise incur any financial liability hereunder.

(g) All indemnifications and releases from liability granted herein to the Trustee shall extend to the directors, officers, employees and agents of the Trustee.

(h) The Trustee shall have no responsibility or liability with respect to any information, statements or recital in any offering memorandum or other disclosure material prepared or distributed with respect to the issuance of the Bonds.

(i) Before taking any action under Article VIII or this Article at the request of the Owners the Trustee may require that a satisfactory indemnity bond be furnished by the Owners for the reimbursement of all expenses to which it may be put and to protect it against all liability, except liability which is adjudicated to have resulted from its negligence or willful misconduct in connection with any action so taken.

**Section 6.04. Right to Rely on Documents.** The Trustee shall be protected in acting upon any notice, resolution, request, consent, order, certificate, report, opinion or other paper or document believed by it to be genuine and to have been signed or presented by the proper party or parties, in the absence of negligence or willful misconduct by the Trustee. The Trustee may consult with counsel, including, without limitation, Bond Counsel or other counsel of or to the Agency, with regard to legal questions, and in the absence of negligence or willful misconduct by the Trustee the opinion of such counsel shall be full and complete authorization and protection in respect of any action taken or suffered by the Trustee hereunder in accordance therewith.

The Trustee shall not be bound to recognize any person as the Owner of a Bond unless and until such Bond is submitted for inspection, if required, and his title thereto is established to the satisfaction of the Trustee.

Whenever in the administration of the trusts imposed upon it by this Indenture the Trustee shall deem it necessary or desirable that a matter be proved or established prior to

taking or suffering any action hereunder, such matter (unless other evidence in respect thereof be herein specifically prescribed) may be deemed to be conclusively proved and established by a Certificate of the Agency, which shall be full warrant to the Trustee for any action taken or suffered in good faith under the provisions of this Indenture in reliance upon such Certificate, but in its discretion the Trustee may (but shall have no duty to), in lieu thereof, accept other evidence of such matter or may require such additional evidence as to it may deem reasonable. The Trustee may conclusively rely on any certificate or Report of any Independent Accountant or Independent Redevelopment Consultant appointed by the Agency.

**Section 6.05. Preservation and Inspection of Documents.** All documents received by the Trustee under the provisions of this Indenture shall be retained in its possession and shall be subject during normal business hours, and upon reasonable prior written notice, to the inspection of the Agency and any Owner, and their agents and representatives duly authorized in writing.

**Section 6.06. Compensation and Indemnification.** The Agency shall pay to the Trustee from time to time compensation for all services rendered under this Indenture and also all expenses, charges, legal and consulting fees and other disbursements and those of its attorneys, agents and employees, incurred in and about the performance of its powers and duties under this Indenture. Upon the occurrence of an Event of Default, the Trustee shall have a first lien on the Housing Tax Increment Revenues and all funds and accounts held by the Trustee hereunder (other than the Reserve Account) to secure the payment to the Trustee of all fees, costs and expenses, including compensation to its experts, attorneys and counsel incurred in declaring such Event of Default and in exercising the rights and remedies set forth in Article VIII.

The Agency further covenants and agrees to indemnify and save the Trustee and its officers, directors, agents and employees, harmless against any loss, expense and liabilities which it may incur arising out of or in the exercise and performance of its powers and duties hereunder, including the costs and expenses of defending against any claim of liability and of enforcing any remedies hereunder and under any related documents, but excluding any and all losses, expenses and liabilities which are due to the negligence or willful misconduct of the Trustee, its officers, directors, agents or employees. The obligations of the Agency under this Section 6.06 shall survive resignation or removal of the Trustee under this Indenture and payment of the Bonds and discharge of this Indenture. The Trustee shall cooperate with the Agency in connection with any litigation referred to in this paragraph, such as the sharing of information gathered in connection with any such litigation. The Trustee shall review with counsel to the Agency materials and information obtained in connection with any such litigation with the purpose of minimizing duplication of effort.

**Section 6.07. Accounting Records and Financial Statements.** The Trustee shall at all times keep, or cause to be kept, proper books of record and account, prepared in accordance with corporate trust industry standards, in which complete and accurate entries shall be made of all transactions made by it relating to the proceeds of each series of the Bonds and all funds and accounts established and held by the Trustee pursuant to this Indenture. Such books of record and account shall be available for inspection by the Agency at reasonable hours, during regular business hours, with reasonable prior notice and under reasonable circumstances. The Trustee shall furnish to the Agency, at least monthly, an accounting (which may be in the form of its customary statements) of all transactions relating to the proceeds of the Bonds and all funds and accounts, valued at the then market value, held by the Trustee pursuant to this Indenture.

**Section 6.08. Appointment of Co-Trustee or Agent.** It is the purpose of this Indenture that there shall be no violation of any law of any jurisdiction (including particularly the law of the State) denying or restricting the right of national banking associations or associations to

transact business as Trustee in such jurisdiction. It is recognized that in the case of litigation under this Indenture, and in particular in case of the enforcement of the rights of the Trustee on default, or in the case the Trustee deems that by reason of any present or future law of any jurisdiction it may not exercise any of the powers, rights or remedies herein granted to the Trustee or hold title to the properties, in trust, as herein granted, or take any other action which may be desirable or necessary in connection therewith, it may be necessary that the Trustee appoint an additional individual or institution as a separate co-Trustee. The following provisions of this Section 6.08 are adopted to these ends.

In the event that the Trustee appoints an additional individual or institution as a separate or co-Trustee, each and every remedy, power, right, claim, demand, cause of action, immunity, estate, title, interest and lien expressed or intended by this Indenture to be exercised by or vested in or conveyed to the Trustee with respect thereto shall be exercisable by and vest in such separate or co-Trustee but only to the extent necessary to enable such separate or co-Trustee to exercise such powers, rights and remedies, and every covenant and obligation necessary to the exercise thereof by such separate or co-Trustee shall run to and be enforceable by either of them.

Should any instrument in writing from the Agency be required by the separate Trustee or co-Trustee so appointed by the Trustee for more fully and certainly vesting in and confirming to it such properties, rights, powers, trusts, duties and obligations, any and all such instruments in writing shall, on request, be executed, acknowledged and delivered by the Agency. In case any separate Trustee or co-Trustee, or a successor to either, shall become incapable of acting, resign or be removed, all the estates, properties, rights, powers, trusts, duties and obligations of such separate Trustee or co-Trustee, so far as permitted by law, shall vest in and be exercised by the Trustee until the appointment of a new Trustee or successor to such separate Trustee or co-Trustee.

The Trustee may perform any of its obligations or duties hereunder and under any related documents through agents or attorneys and shall not be responsible for the acts of any such agents or attorneys appointed by it with due care.

## ARTICLE VII

### MODIFICATION OR AMENDMENT OF THIS INDENTURE

**Section 7.01. Amendment With Consent of Owners.** This Indenture and the rights and obligations of the Agency and of the Owners may be modified or amended at any time by a Supplemental Indenture which shall become binding upon adoption, without the consent of any Owners, to the extent permitted by law and only for any one or more of the following purposes:

(a) to add to the covenants and agreements of the Agency contained in this Indenture, other covenants and agreements thereafter to be observed, or to limit or surrender any right or power herein reserved to or conferred upon the Agency; or

(b) to make such provisions for the purpose of curing any ambiguity, or of curing, correcting or supplementing any defective provision contained in this Indenture, or in any other respect whatsoever as the Agency may deem necessary or desirable, provided under any circumstances that such modifications or amendments shall not materially adversely affect the interests of the Owners in the opinion of Bond Counsel; or

(c) to provide for the issuance of Parity Debt, and to provide the terms and conditions under which such Parity Debt may be issued, including but not limited to the establishment of special funds and accounts relating thereto and any other provisions relating solely thereto, subject to and in accordance with the provisions of Section 3.05 hereof; or

(d) to make such additions, deletions or modifications as may be necessary or desirable to assure exclusion from gross income for purposes of federal income taxation of interest on the Tax-Exempt Bonds.

Except as set forth in the preceding paragraph, this Indenture and the rights and obligations of the Agency and of the Owners may be modified or amended at any time by a Supplemental Indenture which shall become binding when the written consents of the Owners of a majority in aggregate principal amount of the Bonds then Outstanding are delivered to the Trustee. No such modification or amendment shall (a) extend the maturity of or reduce the interest rate on any Bond or otherwise alter or impair the obligation of the Agency to pay the principal, interest or redemption premium (if any) at the time and place and at the rate and in the currency provided therein of any Bond without the express written consent of the Owner of such Bond, (b) reduce the percentage of Bonds required for the written consent to any such amendment or modification, or (c) without its written consent thereto, modify any of the rights or obligations of the Trustee.

**Section 7.02. Effect of Supplemental Indenture.** From and after the time any Supplemental Indenture becomes effective pursuant to this Article VII, this Indenture shall be deemed to be modified and amended in accordance therewith, the respective rights, duties and obligations of the parties hereto or thereto and all Owners, as the case may be, shall thereafter be determined, exercised and enforced hereunder subject in all respects to such modification and amendment, and all the terms and conditions of any Supplemental Indenture shall be deemed to be part of the terms and conditions of this Indenture for any and all purposes.



**Section 7.03. Endorsement or Replacement of Bonds After Amendment.** After the effective date of any amendment or modification hereof pursuant to this Article VII, the Agency may determine that any or all of the Bonds shall bear a notation, by endorsement in form approved by the Agency, as to such amendment or modification and in that case upon demand of the Agency the Owners of such Bonds shall present such Bonds for that purpose at the Office of the Trustee and thereupon a suitable notation as to such action shall be made on such Bonds. In lieu of such notation, the Agency may determine that new Bonds shall be prepared and executed in exchange for any or all of the Bonds and in that case upon demand of the Agency the Owners of the Bonds shall present such Bonds for exchange at the Office of the Trustee without cost to such Owners.

**Section 7.04. Amendment by Mutual Consent.** The provisions of this Article VII shall not prevent any Owner from accepting any amendment as to the particular Bond held by such Owner, provided that due notation thereof is made on such Bond.

**Section 7.05. Trustee's Reliance.** The Trustee may rely, and shall be protected in relying, upon a Certificate of the Agency and an opinion of counsel stating that all requirements of this Indenture relating to the amendment or modification hereof have been satisfied and that such amendments or modifications do not materially adversely affect the interests of the Owners.

## ARTICLE VIII

### EVENTS OF DEFAULT AND REMEDIES OF OWNERS

**Section 8.01. Events of Default.** The following events shall constitute Events of Default hereunder:

(a) Failure to pay any installment of the principal of any Bonds when and as the same shall become due and payable, whether at maturity as therein expressed, by proceedings for redemption or otherwise.

(b) Failure to pay any installment of interest on any Bonds when and as the same shall become due and payable.

(c) Failure by the Agency to observe and perform any of the other covenants, agreements or conditions on its part in this Indenture or in the Bonds contained, if such failure shall have continued for a period of thirty (30) days after written notice thereof, specifying such failure and requiring the same to be remedied, shall have been given to the Agency by the Trustee; *provided, however*, if in the reasonable opinion of the Agency the failure stated in the notice can be corrected, but not within such sixty (60) day period, such failure shall not constitute an Event of Default if corrective action is instituted by the Agency within such thirty (30) day period and the Agency shall thereafter diligently and in good faith cure such failure in a reasonable period of time.

(d) The Agency shall commence a voluntary case under Title 11 of the United States Code or any substitute or successor statute.

(e) The occurrence of an Event of Default under and as defined in any Parity Debt Instrument.

If an Event of Default has occurred and is continuing, the Trustee may, and if requested in writing by the Owners of a majority in aggregate principal amount of the Bonds then Outstanding the Trustee shall exercise any remedies available to the Trustee and the Owners in law or at equity.

Immediately upon becoming aware of the occurrence of an Event of Default, the Trustee shall give notice of such Event of Default to the Agency by telephone confirmed in writing. With respect to any Event of Default described in clauses (a) or (b) above the Trustee shall, and with respect to any Event of Default described in clause (c) above the Trustee in its sole discretion may, also give such notice to the Owners in the same manner as provided herein for notices of redemption of the Bonds.

**Section 8.02. Application of Funds Upon Default.** So long as an Event of Default exists, all sums received by the Trustee hereunder shall be applied by the Trustee as follows and in the following order:

(a) To the payment of the reasonable fees, costs and expenses of the Trustee (including reasonable fees and expenses of its counsel) incurred in and about the performance of its powers and duties under this Indenture and the payment of all reasonable fees, costs and expenses owing to the Trustee pursuant to Section 6.06 hereof; and

(b) To the payment of the whole amount of interest on and principal (including Sinking Account installments) of the Bonds then due and unpaid, with interest on overdue installments of principal and interest to the extent permitted by law at the net effective rate of interest then borne by the Outstanding Bonds; provided, however, that in the event such amounts shall be insufficient to pay the full amount of such interest and principal (including Sinking Account installments), then such amounts shall be applied in the following order of priority:

(a) *first*, to the payment of all installments of interest on the Bonds then due and unpaid, on a pro rata basis in the event that the available amounts are insufficient to pay all such interest in full,

(b) *second*, to the payment of principal of all installments of the Bonds then due and unpaid (including Sinking Account installments), on a pro rata basis in the event that the available amounts are insufficient to pay all such principal and Sinking Account installments in full, and

(c) *third*, to the payment of interest on overdue installments of principal and interest, on a pro rata basis in the event that the available amounts are insufficient to pay all such interest in full.

**Section 8.03. Power of Trustee to Control Proceedings.** In the event that the Trustee, upon the happening of an Event of Default, shall have taken any action, by judicial proceedings or otherwise, pursuant to its duties hereunder, whether upon its own discretion or upon the request of the Owners of a majority in principal amount of the Bonds then Outstanding it shall have full power, in the exercise of its discretion for the best interests of the Owners of the Bonds, with respect to the continuance, discontinuance, withdrawal, compromise, settlement or other disposal of such action; *provided, however*, that the Trustee shall not, unless there no longer continues an Event of Default, discontinue, withdraw, compromise or settle, or otherwise dispose of any litigation pending at law or in equity, if at the time there has been filed with it a written request signed by the Owners of a majority in principal amount of the Outstanding Bonds hereunder opposing such discontinuance, withdrawal, compromise, settlement or other disposal of such litigation.

**Section 8.04. Limitation on Owners' Right to Sue.** No Owner of any Bond issued hereunder shall have the right to institute any suit, action or proceeding at law or in equity, for any remedy under or upon this Indenture, unless (a) such Owner shall have previously given to the Trustee written notice of the occurrence of an Event of Default; (b) the Owners of a majority in aggregate principal amount of all the Bonds then Outstanding shall have made written request upon the Trustee to exercise the powers hereinbefore granted or to institute such action, suit or proceeding in its own name; (c) said Owners shall have tendered to the Trustee indemnity reasonably acceptable to the Trustee against the costs, expenses and liabilities to be incurred in compliance with such request; and (d) the Trustee shall have refused or omitted to comply with such request for a period of sixty (60) days after such written request shall have been received by, and said tender of indemnity shall have been made to, the Trustee.

Such notification, request, tender of indemnity and refusal or omission are hereby declared, in every case, to be conditions precedent to the exercise by any Owner of any remedy hereunder; it being understood and intended that no one or more Owners shall have any right in any manner whatever by his or their action to enforce any right under this Indenture, except in the manner herein provided, and that all proceedings at law or in equity to enforce any provision of this Indenture shall be instituted, had and maintained in the manner herein provided and for the equal benefit of all Owners of the Outstanding Bonds.

The right of any Owner of any Bond to receive payment of the principal of and premium, if any, and interest on such Bond as herein provided, shall not be impaired or affected without the written consent of such Owner, notwithstanding the foregoing provisions of this Section or any other provision of this Indenture.

**Section 8.05. Non-waiver.** Nothing in this Article VIII or in any other provision of this Indenture or in the Bonds, shall affect or impair the obligation of the Agency, which is absolute and unconditional, to pay from the Housing Tax Increment Revenues and other amounts pledged hereunder, the principal of and interest and redemption premium (if any) on the Bonds to the respective Owners when due and payable as herein provided, or affect or impair the right of action, which is also absolute and unconditional, of the Owners or the Trustee to institute suit to enforce such payment by virtue of the contract embodied in the Bonds.

A waiver of any default by any Owner or the Trustee shall not affect any subsequent default or impair any rights or remedies on the subsequent default. No delay or omission of any Owner or the Trustee to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver of any such default or an acquiescence therein, and every power and remedy conferred upon the Owners or the Trustee by the Redevelopment Law or by this Article VIII may be enforced and exercised from time to time and as often as shall be deemed expedient by the Owners or the Trustee.

If a suit, action or proceeding to enforce any right or exercise any remedy shall be abandoned or determined adversely to the Owners or the Trustee, the Agency, the Trustee and the Owners shall be restored to their former positions, rights and remedies as if such suit, action or proceeding had not been brought or taken.

**Section 8.06. Actions by Trustee as Attorney-in-Fact.** Any suit, action or proceeding which any Owner shall have the right to bring to enforce any right or remedy hereunder may be brought by the Trustee for the equal benefit and protection of all Owners similarly situated and the Trustee is hereby appointed (and the successive respective Owners by taking and holding the Bonds shall be conclusively deemed so to have appointed it) the true and lawful attorney-in-fact of the respective Owners for the purpose of bringing any such suit, action or proceeding and to do and perform any and all acts and things for and on behalf of the respective Owners as a class or classes, as may be necessary or advisable in the opinion of the Trustee as such attorney-in-fact, subject to the provisions of Article VI.

**Section 8.07. Remedies Not Exclusive.** No remedy herein conferred upon or reserved to the Owners is intended to be exclusive of any other remedy. Every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing, at law or in equity or by statute or otherwise, and may be exercised without exhausting and without regard to any other remedy conferred by the Redevelopment Law or any other law.

## ARTICLE IX

### MISCELLANEOUS

**Section 9.01. Benefits Limited to Parties.** Nothing in this Indenture, expressed or implied, is intended to give to any person other than the Agency, the Trustee and the Owners, any right, remedy or claim under or by reason of this Indenture. Any covenants, stipulations, promises or agreements in this Indenture contained by and on behalf of the Agency shall be for the sole and exclusive benefit of the Trustee and the Owners.

**Section 9.02. Successor is Deemed Included in All References to Predecessor.** Whenever in this Indenture or any Supplemental Indenture either the Agency or the Trustee is named or referred to, such reference shall be deemed to include the successors or assigns thereof, and all the covenants and agreements in this Indenture contained by or on behalf of the Agency or the Trustee shall bind and inure to the benefit of the respective successors and assigns thereof whether so expressed or not.

**Section 9.03. Defeasance of Bonds.** If the Agency shall pay and discharge the entire indebtedness on any Bonds in any one or more of the following ways:

(a) by paying or causing to be paid the principal of and interest on such Bonds, as and when the same become due and payable;

(b) by irrevocably depositing with the Trustee or an escrow agent, in trust, at or before maturity, money which, together with the available amounts then on deposit in the funds and accounts established pursuant to this Indenture, in the opinion or report of an Independent Accountant or Bond Counsel is fully sufficient to pay such Bonds, including all principal, interest and redemption premium, if any;

(c) by irrevocably depositing with the Trustee or an escrow agent, in trust, Defeasance Securities in such amount as an Independent Accountant or Bond Counsel shall determine will, together with the interest to accrue thereon and available moneys then on deposit in any of the funds and accounts established pursuant to this Indenture, be fully sufficient to pay and discharge the indebtedness on such Bonds (including all principal, interest and redemption premium, if any) at or before maturity; or

(d) by purchasing such Bonds prior to maturity and tendering such Bonds to the Trustee for cancellation;

and if such Bonds are to be redeemed prior to the maturity thereof, notice of such redemption shall have been duly given or provision satisfactory to the Trustee shall have been made for the giving of such notice, then, at the election of the Agency, and notwithstanding that any such Bonds shall not have been surrendered for payment, the pledge of the Housing Tax Increment Revenues and other funds provided for in this Indenture and all other obligations of the Trustee and the Agency under this Indenture with respect to such Bonds shall cease and terminate, except only (a) the obligation of the Trustee to transfer and exchange Bonds hereunder, (b) the obligation of the Agency to pay or cause to be paid to the Owners of such Bonds, from the amounts so deposited with the Trustee, all sums due thereon, and (c) the obligations of the Agency to compensate and indemnify the Trustee pursuant to Section 6.06. Notice of such election shall be filed with the Trustee. Any funds thereafter held by the Trustee, which are not required for said purpose, shall be paid over to the Agency, to be used for any lawful purpose of the Agency.

**Section 9.04. Execution of Documents and Proof of Ownership by Owners.** Any request, consent, declaration or other instrument which this Indenture may require or permit to be executed by any Owner may be in one or more instruments of similar tenor, and shall be executed by such Owner in person or by their attorneys appointed in writing.

Except as otherwise herein expressly provided, the fact and date of the execution by any Owner or his attorney of such request, declaration or other instrument, or of such writing appointing such attorney, may be proved by the certificate of any notary public or other officer authorized to take acknowledgments of deeds to be recorded in the state in which he purports to act, that the person signing such request, declaration or other instrument or writing acknowledged to him the execution thereof, or by an affidavit of a witness of such execution, duly sworn to before such notary public or other officer.

The ownership of Bonds and the amount, maturity, number and date of ownership thereof shall be proved by the Registration Books.

Any request, consent, declaration or other instrument or writing of the Owner of any Bond shall bind all future Owners of such Bond in respect of anything done or suffered to be done by the Agency or the Trustee in good faith and in accordance therewith.

**Section 9.05. Disqualified Bonds.** In determining whether the Owners of the requisite aggregate principal amount of Bonds have concurred in any demand, request, direction, consent or waiver under this Indenture, Bonds which are owned or held by or for the account of the Agency or the City (but excluding Bonds held in any employees' retirement fund) shall be disregarded and deemed not to be Outstanding for the purpose of any such determination, *provided, however*, that for the purpose of determining whether the Trustee shall be protected in relying on any such demand, request, direction, consent or waiver, only Bonds which the Trustee knows to be so owned or held shall be disregarded.

**Section 9.06. Waiver of Personal Liability.** No member of the governing board, officer, agent or employee of the Agency shall be individually or personally liable for the payment of the principal of or interest or any premium on the Bonds; but nothing herein contained shall relieve any such member, officer, agent or employee from the performance of any official duty provided by law.

**Section 9.07. Destruction of Canceled Bonds.** Whenever in this Indenture provision is made for the surrender to the Agency of any Bonds which have been paid or canceled pursuant to the provisions of this Indenture, upon receipt by the Trustee of the Request of the Agency a certificate of destruction duly executed by the Trustee shall be deemed to be the equivalent of the surrender of such canceled Bonds and the Agency shall be entitled to rely upon any statement of fact contained in any certificate with respect to the destruction of any such Bonds therein referred to.

**Section 9.08. Notices.** All written notices to be given under this Indenture shall be given by first-class mail or personal delivery to the party entitled thereto at its address set forth below, or at such address as the party may provide to the other party in writing from time to time. Notice shall be effective either (a) upon transmission by facsimile transmission or other form of telecommunication, (b) upon actual receipt after deposit in the United States mail, postage prepaid, or (c) in the case of personal delivery to any person, upon actual receipt. The Agency or the Trustee may, by written notice to the other parties, from time to time modify the address or number to which communications are to be given hereunder.



If to the Agency:

Community Improvement Commission of the  
City of Alameda  
c/o City of Alameda  
2263 Santa Clara Avenue  
Alameda, California 94501  
Attention: Executive Director

If to the Trustee:

Union Bank, N.A.  
350 California Street, 11<sup>th</sup> Floor  
San Francisco, California 94104  
Attention: Corporate Trust Services

**Section 9.09. CUSIP Numbers.** The Trustee and the Agency shall not be liable for any defect or inaccuracy in the CUSIP number that appears on any Bond, check, advise of payment or redemption notice and any such document may contain a statement to the effect that CUSIP numbers have been assigned by an independent service for convenience of reference and that neither the Agency nor the Trustee shall be liable for any inaccuracy in such numbers.

**Section 9.10. Partial Invalidity.** If any Section, paragraph, sentence, clause or phrase of this Indenture shall for any reason be held illegal, invalid or unenforceable, such holding shall not affect the validity of the remaining portions of this Indenture. The Agency and the Trustee hereby declare that they would have entered into this Indenture and each and every other Section, paragraph, sentence, clause or phrase hereof and authorized the issue of the Bonds pursuant thereto irrespective of the fact that any one or more Sections, paragraphs, sentences, clauses, or phrases of this Indenture may be held illegal, invalid or unenforceable.

**Section 9.11. Unclaimed Moneys.** Anything contained herein to the contrary notwithstanding, any money held by the Trustee in trust for the payment and discharge of the interest or premium (if any) on or principal of the Bonds which remains unclaimed for two (2) years after the date when the payments of such interest, premium and principal have become payable, if such money was held by the Trustee at such date, or for two (2) years after the date of deposit of such money if deposited with the Trustee after the date when the interest and premium (if any) on and principal of such Bonds have become payable, shall be repaid by the Trustee to the Agency as its absolute property free from trust (subject to any applicable escheat laws of State), and the Trustee shall thereupon be released and discharged with respect thereto and the Owners shall look only to the Agency for the payment of the principal of and interest and redemption premium (if any) on of such Bonds.

**Section 9.12. Payment on Business Days.** Whenever in this Indenture any amount is required to be paid on a day which is not a Business Day, such payment shall be required to be made on the Business Day immediately following such day, provided that interest on such payment shall not accrue from and after such day.

**Section 9.13. Article and Section Headings and References.** The headings or titles of the several Articles and Sections hereof, and any table of contents appended to copies hereof, shall be solely for convenience of reference and shall not affect the meaning, construction or effect of this Indenture. All references herein to "Articles", "Sections" and other subdivisions are to the corresponding Articles, Sections or subdivisions of this Indenture; the words "herein", "hereof", "hereby", "hereunder" and other words of similar import refer to this Indenture as a whole and not to any particular Article, Section or subdivision hereof; and words of the masculine gender shall mean and include words of the feminine and neuter genders.

**Section 9.14. Execution in Counterparts.** This Indenture may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

**Section 9.15. Governing Law.** This Indenture shall be construed and governed in accordance with the laws of the State.

IN WITNESS WHEREOF, the COMMUNITY IMPROVEMENT COMMISSION OF THE CITY OF ALAMEDA has caused this Indenture to be signed in its name by its Executive Director, and UNION BANK, N.A., in token of its acceptance of the trusts created hereunder, has caused this Indenture to be signed in its corporate name by its officer thereunto duly authorized, all as of the day and year first above written.

COMMUNITY IMPROVEMENT  
COMMISSION OF THE CITY OF  
ALAMEDA

By: \_\_\_\_\_  
Executive Director

UNION BANK, N.A.,  
as Trustee

By: \_\_\_\_\_  
Authorized Officer

01026.04:J11007

**EXHIBIT A**  
**FORM OF 2011 SERIES A BONDS**

No. \_\_\_\_\_

\$\_\_\_\_\_

UNITED STATES OF AMERICA  
STATE OF CALIFORNIA  
COUNTY OF ALAMEDA

COMMUNITY IMPROVEMENT COMMISSION OF THE CITY OF ALAMEDA  
2011 TAX ALLOCATION HOUSING BOND, SERIES A (TAXABLE)  
(MERGED WECIP /BWIP PROJECT AREA)

<u><b>RATE OF INTEREST</b></u>	<u><b>MATURITY DATE:</b></u>	<u><b>DATED DATE:</b></u>	<u><b>CUSIP:</b></u>
_____%	September 1, ____	April __, 2011	_____

REGISTERED OWNER:

PRINCIPAL AMOUNT:

DOLLARS

The COMMUNITY IMPROVEMENT COMMISSION OF THE CITY OF ALAMEDA, a public body, corporate and politic, duly organized and existing under the laws of the State of California (the "Agency"), for value received, hereby promises to pay (but only out of the Housing Tax Increment Revenues and other moneys hereafter referred to) to the Registered Owner identified above or registered assigns (the "Registered Owner"), on the Maturity Date identified above, the Principal Amount identified above in lawful money of the United States of America; and to pay interest thereon at the Rate of Interest identified above in like lawful money from the date hereof, which date shall be the Interest Payment Date (as hereinafter defined) next preceding the date of authentication of this Bond (unless (i) this Bond is authenticated on or before an Interest Payment Date and after the first calendar day of the month in which such Interest Payment Date occurs (a "Record Date"), in which event it shall bear interest from such Interest Payment Date, (ii) this Bond is authenticated on or prior to August 15, 2011, in which event it shall bear interest from the Dated Date identified above, or (iii) interest is in default on this Bond, in which event interest on this Bond shall be payable from the date to which interest hereon has been paid in full), payable semiannually on March 1 and September 1 in each year, commencing September 1, 2011 (the "Interest Payment Dates") until payment of such Principal amount in full. Interest shall be calculated on the basis of a 360-day year comprised of twelve 30-day months. The principal amount hereof is payable upon presentation hereof at the Office (as defined in the Indenture) of Union Bank, N.A., as trustee (the "Trustee"), or at such other place as is designated by the Trustee. Interest hereon is payable by check of the Trustee mailed by first-class mail, postage prepaid, on each Interest Payment Date to the Registered Owner hereof at the address of such Registered Owner as it appears on the registration books of the Trustee as of the preceding Record Date; provided that at the written request of the owner of at least \$1,000,000 aggregate principal amount of Bonds which written request is on file with the Trustee as of any Record Date, interest on such Bonds shall be paid on the succeeding Interest Payment Date by wire transfer to such account within the United States of America as shall be specified in such written request.

This Bond is one of a duly authorized issue of bonds of the Agency designated as the "Community Improvement Commission of the City of Alameda 2011 Tax Allocation Housing

Bonds, Series A (Taxable) (Merged WECIP/BWIP Project Area)" (the "Bonds") of an aggregate principal amount of \_\_\_\_\_ Million \_\_\_\_\_ Hundred \_\_\_\_\_ Thousand Dollars (\$\_\_\_\_\_), all of like tenor and date (except for such variation, if any, as may be required to designate varying numbers, maturities, interest rates or redemption provisions) and all issued pursuant to the provisions of Part 1 of Division 24 of the California Health and Safety Code (the "Redevelopment Law") and pursuant to an Indenture of Trust, dated as of April 1, 2011, by and between the Agency and the Trustee (the "Indenture"). The Bonds have been authorized to be issued by the Agency pursuant to resolutions of the Agency, adopted on March 2, 2011 and April 6, 2011. The Agency has issued, concurrent with the issuance of the Bonds, its \$\_\_\_\_\_ 2011 Tax Allocation Housing Bonds, Series B (Tax-Exempt) (the "2011 Series B Bonds"), which are secured on a parity with the Bonds under the Indenture, and the Agency may issue or incur additional obligations secured on a parity with the Bonds and the 2011 Series B Bonds, but only subject to the terms of the Indenture. Reference is hereby made to the Indenture (copies of which are on file at the office of the Trustee) and all supplements thereto and to the Redevelopment Law for a description of the terms on which the Bonds are issued, the provisions with regard to the nature and extent of the Housing Tax Increment Revenues, as that term is defined in the Indenture, and the rights thereunder of the owners of the Bonds and the rights, duties and immunities of the Trustee and the rights and obligations of the Agency thereunder, to all of the provisions of which the Registered Owner of this Bond, by acceptance hereof, assents and agrees.

The Bonds have been issued by the Agency to provide moneys to finance certain housing activities of the Agency.

This Bond and the interest hereon are payable from, and are secured by a charge and lien on, the Housing Tax Increment Revenues derived by the Agency from the Redevelopment Project (as such terms are defined in the Indenture), subordinate to the pledge thereof to pay the Senior Debt (as defined in the Indenture), and on a parity with the 2011 Series B Bonds and any other Parity Debt at any time issued by the Agency under and in accordance with the Indenture. As and to the extent set forth in the Indenture, all of the Housing Tax Increment Revenues are irrevocably pledged in accordance with the terms and the provisions of the Indenture and the Redevelopment Law, to the payment of the principal of and interest and premium (if any) on the Bonds, the 2011 Series B Bonds and any such other Parity Debt. Notwithstanding the foregoing, certain amounts out of Housing Tax Increment Revenues may be applied for other purposes as provided in any Parity Debt Instrument or the Indenture.

This Bond is not a debt of the City of Alameda, the State of California, or any of its political subdivisions, and neither said City nor said State or any of its political subdivisions is liable hereon, nor in any event shall this Bond be payable out of any funds or properties other than the Housing Tax Increment Revenues and amounts held in certain funds and accounts under the Indenture.

The rights and obligations of the Agency and the owners of the Bonds may be modified or amended at any time in the manner, to the extent and upon the terms provided in the Indenture, but no such modification or amendment shall permit a change in the terms of redemption or maturity of the principal of any outstanding Bond or of any installment of interest thereon or a reduction in the principal amount or the redemption price thereof or in the rate of interest thereon without the consent of the owner of such Bond, or shall reduce the percentages of the owners required to effect any such modification or amendment.

The Bonds maturing on and after September 1, \_\_\_\_, shall be subject to redemption in whole or in part on any date, on or after September 1, \_\_\_\_, at the option of the Agency from any available source of funds, at a redemption price equal to one hundred percent (100%) of the

principal amount thereof to be redeemed together with accrued interest thereon to the redemption date, without premium.

The Bonds maturing on September 1, \_\_\_\_ and on September 1, \_\_\_\_ shall also be subject to redemption in whole, or in part by lot, at a redemption price equal to the principal amount thereof together with accrued interest thereon to the redemption date, without premium, from mandatory sinking account payments under the Indenture, on September 1 in the respective years and in the respective amounts set forth below:

Bonds Maturing September 1, \_\_\_\_

Sinking Account	
Redemption Date	Principal Amount
<u>(September 1)</u>	<u>To Be Redeemed</u>

Bonds Maturing September 1, \_\_\_\_

Sinking Account	
Redemption Date	Principal Amount
<u>(September 1)</u>	<u>To Be Redeemed</u>

As provided in the Indenture, notice of redemption shall be mailed by the Trustee by first-class mail not less than thirty (30) nor more than sixty (60) days prior to the redemption date to the respective owners of any Bonds designated for redemption at their addresses appearing on the Bond registration books of the Trustee, but neither failure to receive such notice nor any defect in the notice so mailed shall affect the sufficiency of the proceedings for redemption. In the case of any optional redemption of the Bonds under the Indenture, the notice of redemption shall state that the redemption is conditioned upon receipt by the Trustee of sufficient moneys to redeem the Bonds on the anticipated redemption date, and that the optional redemption shall not occur if by no later than the scheduled redemption date sufficient moneys to redeem the Bonds have not been deposited with the Trustee. In the event that the Trustee does not receive sufficient funds by the scheduled optional redemption date to so redeem the Bonds to be optionally redeemed, the Trustee shall send written notice to the Owners of the Bonds to the effect that the redemption did not occur as anticipated, and the Bonds for which notice of optional redemption was given shall remain Outstanding for all purposes of the Indenture.

If this Bond is called for redemption and payment is duly provided therefor as specified in the Indenture, interest shall cease to accrue hereon from and after the date fixed for redemption.

This Bond may be presented for transfer by the Registered Owner hereof, in person or by his attorney duly authorized in writing, at said Office of the Trustee or at such other place as



is designated by the Trustee, but only in the manner, subject to the limitations and upon payment of the charges provided in the Indenture, and upon surrender and cancellation of this Bond. Upon registration of such transfer a new Bond or Bonds, of authorized denomination or denominations, for the same aggregate Principal amount and of the same maturity will be issued to the transferee in exchange herefor.

The Indenture contains provisions permitting the Agency and the Trustee to execute supplemental indentures adding provisions to, or changing or eliminating any of the provisions of, the Indenture, subject to the limitations set forth in the Indenture.

The Indenture contains provisions permitting the Agency to make provisions for the payment of the interest on, and the principal and premium, if any, of the Bonds so that such Bonds shall no longer be deemed to be outstanding under the terms of the Indenture.

The Agency and the Trustee may treat the Registered Owner hereof as the absolute owner hereof for all purposes, and the Agency and the Trustee shall not be affected by any notice to the contrary.

It is hereby certified that all of the things, conditions and acts required to exist, to have happened or to have been performed precedent to and in the issuance of this Bond do exist, have happened or have been performed in due and regular time, form and manner as required by the Redevelopment Law and the laws of the State of California and that the amount of this Bond, together with all other indebtedness of the Agency, does not exceed any limit prescribed by the Redevelopment Law or any laws of the State of California, and is not in excess of the amount of Bonds permitted to be issued under the Indenture.

This Bond shall not be entitled to any benefit under the Indenture or become valid or obligatory for any purpose until the certificate of authentication hereon endorsed shall have been manually signed by the Trustee.

Unless this Bond is presented by an authorized representative of The Depository Trust Company, a New York corporation ("DTC"), to the Agency for registration of transfer, exchange or payment, and any Bond issued is registered in the name of Cede & Co. or such other name as requested by an authorized representative of DTC (and any payment is made to Cede & Co. or to such other entity as is requested by an authorized representative of DTC), ANY TRANSFER, PLEDGE OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL inasmuch as the registered owner hereof, Cede & Co., has an interest herein.

IN WITNESS WHEREOF, the Community Improvement Commission of the City of Alameda has caused this Bond to be executed in its name and on its behalf with the facsimile signature of its Chair and its seal to be impressed hereon and attested to by the facsimile signature of its Secretary, all as of the date of issuance of the Bonds.

COMMUNITY IMPROVEMENT  
COMMISSION OF THE CITY OF ALAMEDA

By \_\_\_\_\_  
Chair

(S E A L)

ATTEST:

\_\_\_\_\_  
Secretary

#### CERTIFICATE OF AUTHENTICATION

This is one of the Bonds described in the within-mentioned Indenture.

Dated:

UNION BANK, N.A., as Trustee

By \_\_\_\_\_  
Authorized Signatory

## ASSIGNMENT

For value received the undersigned hereby sells, assigns and transfers unto

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(Name, Address and Tax Identification or Social Security Number)

the within-mentioned registered Bond and hereby irrevocably constitute(s) and appoint(s) \_\_\_\_\_, attorney, to transfer the same on the registration books of the Trustee with full power of substitution in the premises.

Dated: \_\_\_\_\_

Signatures Guaranteed:

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Note: Signature(s) must be guaranteed by an eligible guarantor.

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Note: The signatures(s) on this Assignment must correspond with the name(s) as written on the face of the within Bond in every particular without alteration or enlargement or any change whatsoever.

## EXHIBIT B

### FORM OF 2011 SERIES B BONDS

No. \_\_\_\_\_

\$ \_\_\_\_\_

UNITED STATES OF AMERICA  
STATE OF CALIFORNIA  
COUNTY OF ALAMEDA

COMMUNITY IMPROVEMENT COMMISSION OF THE CITY OF ALAMEDA  
2011 TAX ALLOCATION HOUSING BOND, SERIES B (TAX-EXEMPT)  
(MERGED WECIP /BWIP PROJECT AREA)

<u>RATE OF INTEREST</u>	<u>MATURITY DATE:</u>	<u>DATED DATE:</u>	<u>CUSIP:</u>
_____%	September 1, ____	April __, 2011	_____

REGISTERED OWNER:

PRINCIPAL AMOUNT:

DOLLARS

The COMMUNITY IMPROVEMENT COMMISSION OF THE CITY OF ALAMEDA, a public body, corporate and politic, duly organized and existing under the laws of the State of California (the "Agency"), for value received, hereby promises to pay (but only out of the Housing Tax Increment Revenues and other moneys hereafter referred to) to the Registered Owner identified above or registered assigns (the "Registered Owner"), on the Maturity Date identified above, the Principal Amount identified above in lawful money of the United States of America; and to pay interest thereon at the Rate of Interest identified above in like lawful money from the date hereof, which date shall be the Interest Payment Date (as hereinafter defined) next preceding the date of authentication of this Bond (unless (i) this Bond is authenticated on or before an Interest Payment Date and after the first calendar day of the month in which such Interest Payment Date occurs (a "Record Date"), in which event it shall bear interest from such Interest Payment Date, (ii) this Bond is authenticated on or prior to August 15, 2011, in which event it shall bear interest from the Dated Date identified above, or (iii) interest is in default on this Bond, in which event interest on this Bond shall be payable from the date to which interest hereon has been paid in full), payable semiannually on March 1 and September 1 in each year, commencing September 1, 2011 (the "Interest Payment Dates") until payment of such Principal amount in full. Interest shall be calculated on the basis of a 360-day year comprised of twelve 30-day months. The principal amount hereof is payable upon presentation hereof at the Office (as defined in the Indenture) of Union Bank, N.A., as trustee (the "Trustee"), or at such other place as is designated by the Trustee. Interest hereon is payable by check of the Trustee mailed by first-class mail, postage prepaid, on each Interest Payment Date to the Registered Owner hereof at the address of such Registered Owner as it appears on the registration books of the Trustee as of the preceding Record Date; provided that at the written request of the owner of at least \$1,000,000 aggregate principal amount of Bonds which written request is on file with the Trustee as of any Record Date, interest on such Bonds shall be paid on the succeeding Interest Payment Date by wire transfer to such account within the United States of America as shall be specified in such written request.

This Bond is one of a duly authorized issue of bonds of the Agency designated as the "Community Improvement Commission of the City of Alameda 2011 Tax Allocation Housing

Bonds, Series B (Tax-Exempt) (Merged WECIP/BWIP Project Area)" (the "Bonds") of an aggregate principal amount of \_\_\_\_\_ Million \_\_\_\_\_ Hundred \_\_\_\_\_ Thousand Dollars (\$\_\_\_\_\_), all of like tenor and date (except for such variation, if any, as may be required to designate varying numbers, maturities, interest rates or redemption provisions) and all issued pursuant to the provisions of Part 1 of Division 24 of the California Health and Safety Code (the "Redevelopment Law") and pursuant to an Indenture of Trust, dated as of April 1, 2011, by and between the Agency and the Trustee (the "Indenture"). The Bonds have been authorized to be issued by the Agency pursuant to resolutions of the Agency, adopted on March 2, 2011 and April 6, 2011. The Agency has issued, concurrent with the issuance of the Bonds, its \$\_\_\_\_\_ 2011 Tax Allocation Bonds, Series A (Taxable) (the "2011 Series A Bonds"), which are secured on a parity with the Bonds under the Indenture, and the Agency may issue or incur additional obligations secured on a parity with the Bonds and the 2011 Series A Bonds, but only subject to the terms of the Indenture. Reference is hereby made to the Indenture (copies of which are on file at the office of the Trustee) and all supplements thereto and to the Redevelopment Law for a description of the terms on which the Bonds are issued, the provisions with regard to the nature and extent of the Housing Tax Increment Revenues, as that term is defined in the Indenture, and the rights thereunder of the owners of the Bonds and the rights, duties and immunities of the Trustee and the rights and obligations of the Agency thereunder, to all of the provisions of which the Registered Owner of this Bond, by acceptance hereof, assents and agrees.

The Bonds have been issued by the Agency to refinance the obligations of the Agency under a 1992 Loan Agreement (as defined in the Indenture).

This Bond and the interest hereon are payable from, and are secured by a charge and lien on, the Housing Tax Increment Revenues derived by the Agency from the Redevelopment Project (as such terms are defined in the Indenture), subordinate to the pledge thereof to pay the Senior Debt (as defined in the Indenture), and on a parity with the 2011 Series A Bonds and any other Parity Debt at any time issued by the Agency under and in accordance with the Indenture. As and to the extent set forth in the Indenture, all of the Housing Tax Increment Revenues are irrevocably pledged in accordance with the terms and the provisions of the Indenture and the Redevelopment Law, to the payment of the principal of and interest and premium (if any) on the Bonds, the 2011 Series A Bonds and any such other Parity Debt. Notwithstanding the foregoing, certain amounts out of Housing Tax Increment Revenues may be applied for other purposes as provided in any Parity Debt Instrument or the Indenture.

This Bond is not a debt of the City of Alameda, the State of California, or any of its political subdivisions, and neither said City nor said State or any of its political subdivisions is liable hereon, nor in any event shall this Bond be payable out of any funds or properties other than the Housing Tax Increment Revenues and amounts held in certain funds and accounts under the Indenture.

The rights and obligations of the Agency and the owners of the Bonds may be modified or amended at any time in the manner, to the extent and upon the terms provided in the Indenture, but no such modification or amendment shall permit a change in the terms of redemption or maturity of the principal of any outstanding Bond or of any installment of interest thereon or a reduction in the principal amount or the redemption price thereof or in the rate of interest thereon without the consent of the owner of such Bond, or shall reduce the percentages of the owners required to effect any such modification or amendment.

The Bonds maturing on and after September 1, \_\_\_\_, shall be subject to redemption in whole or in part on any date, on or after September 1, \_\_\_\_, at the option of the Agency from any available source of funds, at a redemption price equal to one hundred percent (100%) of the

principal amount thereof to be redeemed together with accrued interest thereon to the redemption date, without premium.

The Bonds maturing on September 1, \_\_\_\_ shall also be subject to redemption in whole, or in part by lot, at a redemption price equal to the principal amount thereof together with accrued interest thereon to the redemption date, without premium, from mandatory sinking account payments under the Indenture, on September 1 in the respective years and in the respective amounts set forth below:

Sinking Account  
Redemption Date  
(September 1)

Principal Amount  
To Be Redeemed

As provided in the Indenture, notice of redemption shall be mailed by the Trustee by first-class mail not less than thirty (30) nor more than sixty (60) days prior to the redemption date to the respective owners of any Bonds designated for redemption at their addresses appearing on the Bond registration books of the Trustee, but neither failure to receive such notice nor any defect in the notice so mailed shall affect the sufficiency of the proceedings for redemption. In the case of any optional redemption of the Bonds under the Indenture, the notice of redemption shall state that the redemption is conditioned upon receipt by the Trustee of sufficient moneys to redeem the Bonds on the anticipated redemption date, and that the optional redemption shall not occur if by no later than the scheduled redemption date sufficient moneys to redeem the Bonds have not been deposited with the Trustee. In the event that the Trustee does not receive sufficient funds by the scheduled optional redemption date to so redeem the Bonds to be optionally redeemed, the Trustee shall send written notice to the Owners of the Bonds to the effect that the redemption did not occur as anticipated, and the Bonds for which notice of optional redemption was given shall remain Outstanding for all purposes of the Indenture.

If this Bond is called for redemption and payment is duly provided therefor as specified in the Indenture, interest shall cease to accrue hereon from and after the date fixed for redemption.

This Bond may be presented for transfer by the Registered Owner hereof, in person or by his attorney duly authorized in writing, at said Office of the Trustee or at such other place as is designated by the Trustee, but only in the manner, subject to the limitations and upon payment of the charges provided in the Indenture, and upon surrender and cancellation of this Bond. Upon registration of such transfer a new Bond or Bonds, of authorized denomination or denominations, for the same aggregate Principal amount and of the same maturity will be issued to the transferee in exchange herefor.

The Indenture contains provisions permitting the Agency and the Trustee to execute supplemental indentures adding provisions to, or changing or eliminating any of the provisions of, the Indenture, subject to the limitations set forth in the Indenture.

The Indenture contains provisions permitting the Agency to make provisions for the payment of the interest on, and the principal and premium, if any, of the Bonds so that such Bonds shall no longer be deemed to be outstanding under the terms of the Indenture.



The Agency and the Trustee may treat the Registered Owner hereof as the absolute owner hereof for all purposes, and the Agency and the Trustee shall not be affected by any notice to the contrary.

It is hereby certified that all of the things, conditions and acts required to exist, to have happened or to have been performed precedent to and in the issuance of this Bond do exist, have happened or have been performed in due and regular time, form and manner as required by the Redevelopment Law and the laws of the State of California and that the amount of this Bond, together with all other indebtedness of the Agency, does not exceed any limit prescribed by the Redevelopment Law or any laws of the State of California, and is not in excess of the amount of Bonds permitted to be issued under the Indenture.

This Bond shall not be entitled to any benefit under the Indenture or become valid or obligatory for any purpose until the certificate of authentication hereon endorsed shall have been manually signed by the Trustee.

Unless this Bond is presented by an authorized representative of The Depository Trust Company, a New York corporation ("DTC"), to the Agency for registration of transfer, exchange or payment, and any Bond issued is registered in the name of Cede & Co. or such other name as requested by an authorized representative of DTC (and any payment is made to Cede & Co. or to such other entity as is requested by an authorized representative of DTC), ANY TRANSFER, PLEDGE OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL inasmuch as the registered owner hereof, Cede & Co., has an interest herein.

IN WITNESS WHEREOF, the Community Improvement Commission of the City of Alameda has caused this Bond to be executed in its name and on its behalf with the facsimile signature of its Chair and its seal to be impressed hereon and attested to by the facsimile signature of its Secretary, all as of the date of issuance of the Bonds.

COMMUNITY IMPROVEMENT  
COMMISSION OF THE CITY OF ALAMEDA

By \_\_\_\_\_  
Chair

(S E A L)

ATTEST:

\_\_\_\_\_  
Secretary

#### CERTIFICATE OF AUTHENTICATION

This is one of the Bonds described in the within-mentioned Indenture.

Dated:

UNION BANK, N.A., as Trustee

By \_\_\_\_\_  
Authorized Signatory

## ASSIGNMENT

For value received the undersigned hereby sells, assigns and transfers unto

---

---

(Name, Address and Tax Identification or Social Security Number)

the within-mentioned registered Bond and hereby irrevocably constitute(s) and appoint(s) \_\_\_\_\_, attorney, to transfer the same on the registration books of the Trustee with full power of substitution in the premises.

Dated: \_\_\_\_\_

Signatures Guaranteed:

---

Note: Signature(s) must be guaranteed by an eligible guarantor.

---

Note: The signatures(s) on this Assignment must correspond with the name(s) as written on the face of the within Bond in every particular without alteration or enlargement or any change whatsoever.

**EXHIBIT C**

**DESCRIPTION OF ALAMEDA LANDING PROPERTY**

**Exhibit "A"**  
**FISC North**  
**APN: 074-0905-002-3**

All that certain real property situate in the City of Alameda, County of Alameda, State of California, described as follows:

BEING a portion of Parcel 1 and Parcel 2 described in that certain deed recorded on August 9, 1945 in Book 4757 of Official Records at page 138, Alameda County Records and a portion of Parcel No. 1 and Parcel No. 2 described in that certain deed recorded on December 18, 1944 in Book 4663 of Official Records at page 35, Alameda County Records and a portion of the parcel described in that certain deed recorded on December 18, 1944 in Book 4652 of Official Records at page 172, Alameda County Records and a portion of Parcel No. 1 and Parcel No. 2 described in that certain deed recorded on December 18, 1944 in Book 4652 of Official Records at page 168, Alameda County Records, as said parcels are shown on that certain map entitled "TRACT 7387 - BAYPORT", filed for record on June 24, 2003 in Book 271 of Maps at pages 1 through 34, inclusive, Alameda County Records, more particularly described as follows:

BEGINNING at the most northwesterly corner of the parcel described in Book 4652 of Official Records at page 172, Alameda County Records, and as shown on said map;

Thence continuing along the northerly line of said parcel, North  $86^{\circ}38'46''$  East 402.97 feet;

Thence continuing along said northerly line, South  $84^{\circ}06'14''$  East 14.55 feet to the TRUE POINT OF BEGINNING;

Thence continuing along said northerly line the following four (4) courses:

1. South  $84^{\circ}06'14''$  East 553.05 feet;
2. North  $87^{\circ}53'46''$  East 726.00 feet;
3. South  $87^{\circ}21'14''$  East 858.00 feet;
4. South  $58^{\circ}36'14''$  East 153.54 feet to the northwesterly line of the parcel described in that certain deed recorded on September 24, 1941 in Book 4142 of Official Records at page 18, Alameda County Records;

Thence leaving said northerly line and along last said line, South  $15^{\circ}28'16''$  West 579.96 feet to the most northwesterly corner of Parcel No. 2 described in that certain deed recorded on December 18, 1944 in Book 4663 of Official Records at page 35;

Thence leaving said northwesterly line and along said northerly line of said Parcel No. 2, the following three (3) courses:

1. South  $31^{\circ}40'14''$  East 82.16 feet;
2. South  $81^{\circ}24'14''$  East 285.99 feet;
3. South  $88^{\circ}00'44''$  East 87.24 feet to the most northwesterly corner of Parcel B described in that certain deed recorded on December 1, 1967 in Reel 2084 of Official Records at Image 701, Alameda County Records, being the beginning of a non-tangent curve to the left having a radius of 30050.01 feet, to which point a radial line bears North  $65^{\circ}48'44''$  West;

Thence leaving said northerly line and along said westerly line of said Parcel B, along said curve, through a central angle of  $0^{\circ}12'27''$ , an arc length of 108.83 feet to a point on the southerly line of Parcel 2 described in that certain deed recorded on August 9, 1945 in Book 4757 of Official Records at page 138, Alameda County Records, being the beginning of a non-tangent curve to the left, having a radius of 741.84 feet, to which point a radial line bears North  $13^{\circ}02'54''$  East;

Thence leaving said westerly line along said southerly line of last said Parcel 2 the following five (5) courses:

1. Along said curve, through a central angle of  $1^{\circ}33'38''$ , an arc length of 20.21 feet to a compound curve, having a radius of 980.54 feet;
2. Along said curve, through a central angle of  $1^{\circ}47'59''$ , an arc length of 30.80 feet to a compound curve, having a radius of 1457.97 feet;
3. Along said curve, through a central angle of  $1^{\circ}12'01''$ , an arc length of 30.54 feet to the beginning of a non-tangent curve to the left, having a radius of 2890.33 feet, to which point a radial line bears North  $08^{\circ}27'44''$  East;
4. Along said curve, through a central angle of  $0^{\circ}36'00''$ , an arc length of 30.27 feet;
5. North  $82^{\circ}06'43''$  West 848.13 feet to a point on the southerly line of Parcel No. 1 described in that certain deed recorded on December 18, 1944 in Book 4652 of Official Records at page 168, Alameda County Records;

Thence leaving said southerly line of last said Parcel 2 and along said southerly line of last said Parcel No. 1, North  $88^{\circ}07'13''$  West 422.49 feet to the most southeasterly corner of Parcel 1 described in that certain deed recorded on August 9, 1945 in Book 4757 of Official Records at page 138, Alameda County Records;



Thence leaving last said southerly line and along said southerly line of last said Parcel 1, North 89°46'04" West 1484.98 feet to the easterly line of the parcel described as "PERMANENT EASEMENT P-L-3", as said parcel is described in that certain document entitled "GRANT OF PERMANENT EASEMENT", recorded on July 16, 2001 in Document No. 2001250956, Alameda County Records;

Thence leaving said line and along said easterly line, the following eight (8) courses:

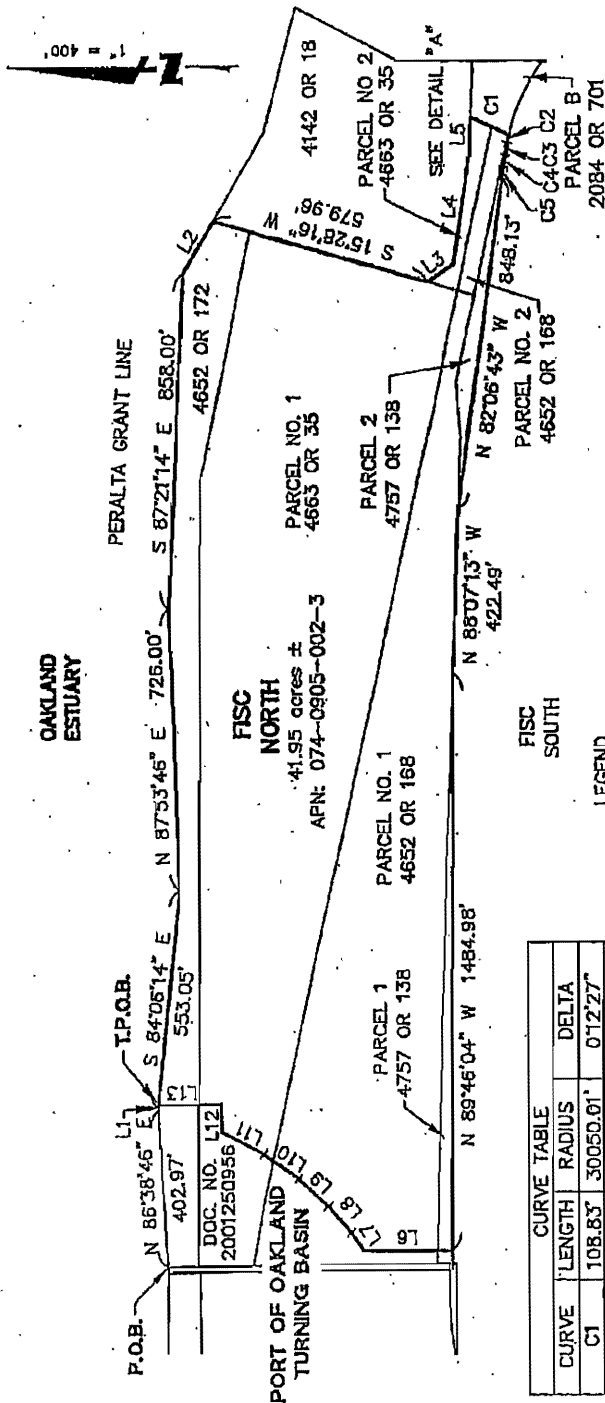
1. North 00°27'33" East 233.03 feet;
2. North 54°46'25" East 55.48 feet;
3. North 49°27'12" East 89.33 feet;
4. North 42°29'56" East 104.80 feet;
5. North 35°03'27" East 112.29 feet;
6. North 27°04'40" East 127.42 feet;
7. South 89°36'01" East 70.20 feet;
8. North 00°23'59" East 163.16 feet to the TRUE POINT OF BEGINNING.

Containing an area of 41.95 acres, more or less.

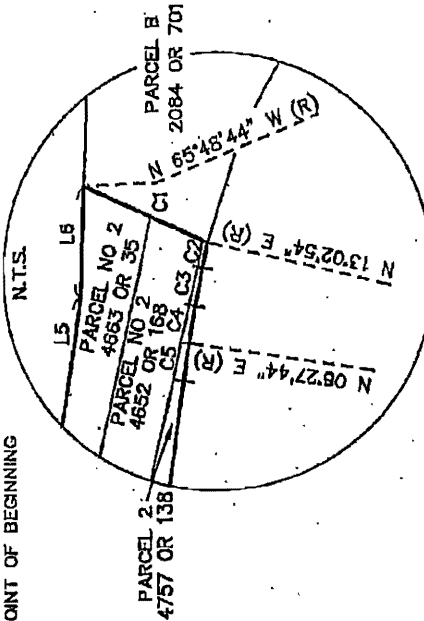
**Basis of Bearings:**

The Bearing between two found "City of Alameda" monuments on Main Street as shown on that certain map entitled, TRACT 7387 - BAYPORT, filed for record on June 24, 2003, in Book 271 of Maps at pages 1 through 34, inclusive, Alameda County Records, and taken as North 00°34'11" East 2613.13 feet is the Basis of Bearings for this map. Bearings are based on the California Coordinate System of 1927 Zone III. All distances in this description are ground distances. Multiply by 0.9999295 to obtain grid distances.

A plat showing the above description is attached herein and made a part hereof as Exhibit "A-1".



### DETAIL "A"



### LEGEND

DOC. NO. — DOCUMENT NUMBER  
OR — OFFICIAL RECORDS  
P.O.B. — POINT OF BEGINNING  
(R) — RADIAL  
T.P.O.B. — TRUE POINT OF BEGINNING

CURVE	LENGTH	RADIUS	DELTA
C1	108.83'	30050.01'	0°12'27"
C2	20.21'	741.84'	1°33'38"
C3	30.80'	980.54'	1°47'59"
C4	30.54'	1457.97'	1°12'01"
C5	30.27'	2890.33'	0°35'00"

LINE	BEARING	LENGTH
L1	S 84°06'14" E	14.55'
L2	S 58°36'14" E	153.54'
L3	S 31°40'14" E	82.16'
L4	S 81°24'14" E	285.99'
L5	S 88°00'44" E	87.24'
L6	N 00°27'33" E	233.03'
L7	N 54°46'25" E	55.48'
L8	N 49°27'12" E	89.33'
L9	N 42°29'56" E	104.80'
L10	N 35°03'27" E	112.29'
L11	N 27°04'40" E	127.42'
L12	S 89°36'01" E	70.20'
L13	N 00°23'59" E	163.16'



4780 Chabot Drive  
Suite 104  
Pleasanton, CA 94588  
925/396-7700  
925/396-7799 (FAX)

Subject EXHIBIT "A-1"  
FISC NORTH REMAINDER  
Job No. 20065092-10  
By RL Date 11/03/06 Chkd. RLH  
SHEET 1 OF 1

NFISC\_remainder.txt

Parcel name: NFISC\_remainder

North: 475492.3321 East : 1484236.0016  
 Line Course: S 84-06-14 E Length: 553.05  
 North: 475435.5201 East : 1484786.1259  
 Line Course: N 87-53-46 E Length: 726.00  
 North: 475462.1726 East : 1485511.6365  
 Line Course: S 87-21-14 E Length: 858.00  
 North: 475422.5614 East : 1486368.7216  
 Line Course: S 58-36-14 E Length: 153.54  
 North: 475342.5745 East : 1486499.7812  
 Line Course: S 15-28-16 W Length: 579.96  
 North: 474783.6389 East : 1486345.0781  
 Line Course: S 31-40-14 E Length: 82.16  
 North: 474713.7141 East : 1486388.2150  
 Line Course: S 81-24-14 E Length: 285.99  
 North: 474670.9677 East : 1486670.9923  
 Line Course: S 88-00-44 E Length: 87.24  
 North: 474667.9417 East : 1486758.1798  
 Curve Length: 108.83 Radius: 30050.01  
 Delta: 0-12-27 Tangent: 54.42  
 Chord: 108.83 Course: S 24-05-03 W  
 Course In: S 65-48-44 E Course Out: N 66-01-11 W  
 RP North: 462355.5976 East : 1514170.0255  
 End North: 474568.5875 East : 1486713.7698  
 Curve Length: 20.21 Radius: 741.84  
 Delta: 1-33-38 Tangent: 10.10  
 Chord: 20.20 Course: N 77-43-55 W  
 Course In: S 13-02-54 W Course Out: N 11-29-16 E  
 RP North: 473845.9019 East : 1486546.2824  
 End North: 474572.8808 East : 1486694.0264  
 Curve Length: 30.80 Radius: 980.54  
 Delta: 1-47-59 Tangent: 15.40  
 Chord: 30.80 Course: N 79-24-44 W  
 Course In: S 11-29-16 W Course Out: N 09-41-17 E  
 RP North: 473611.9837 East : 1486498.7432  
 End North: 474578.5398 East : 1486663.7523  
 Curve Length: 30.54 Radius: 1457.97  
 Delta: 1-12-01 Tangent: 15.27  
 Chord: 30.54 Course: N 80-54-43 W  
 Course In: S 09-41-17 W Course Out: N 08-29-16 E  
 RP North: 473141.3625 East : 1486418.3994  
 End North: 474583.3639 East : 1486633.5935  
 Curve Length: 30.27 Radius: 2890.33  
 Delta: 0-36-00 Tangent: 15.14  
 Chord: 30.27 Course: N 81-50-17 W  
 Course In: S 08-27-44 W Course Out: N 07-51-43 E  
 RP North: 471724.5106 East : 1486208.2619  
 End North: 474587.6631 East : 1486603.6190  
 Line Course: N 82-06-43 W Length: 848.13  
 North: 474704.0588 East : 1485763.5139  
 Line Course: N 88-07-13 W Length: 422.49  
 North: 474717.9171 East : 1485341.2513  
 Line Course: N 89-46-04 W Length: 1484.98  
 North: 474723.9358 East : 1483856.2835

NFISC\_remainder.txt

Line	Course: N 00-27-33 E	Length: 233.03	
	North: 474956.9583	East : 1483858.1509	
Line	Course: N 54-46-25 E	Length: 55.48	
	North: 474988.9596	East : 1483903.4714	
Line	Course: N 49-27-12 E	Length: 89.33	
	North: 475047.0301	East : 1483971.3512	
Line	Course: N 42-29-56 E	Length: 104.80	
	North: 475124.2982	East : 1484042.1515	
Line	Course: N 35-03-27 E	Length: 112.29	
	North: 475216.2161	East : 1484106.6507	
Line	Course: N 27-04-40 E	Length: 127.42	
	North: 475329.6695	East : 1484164.6522	
Line	Course: S 89-36-01 E	Length: 70.20	
	North: 475329.1797	East : 1484234.8505	
Line	Course: N 00-23-59 E	Length: 163.16	
	North: 475492.3358	East : 1484235.9888	
Line	Course: S 10-18-17 W	Length: 0.00	
	North: 475492.3358	East : 1484235.9888	

Perimeter: 7257.91 Area: 1,827,206.83 sq.ft. 41.95 acres

Mapcheck Closure - (Uses listed courses, radii, and deltas)  
 Error Closure: 0.0133 Course: N 74-13-33 W  
 Error North: 0.00361 East : -0.01280  
 Precision 1: 545,706.77

Exhibit "A"  
FISC South  
APN: 074-0905-043 and a portion of 074-0905-042-01

All that certain real property situate in the City of Alameda, County of Alameda, State of California, described as follows:

BEING a portion of the REMAINDER PARCEL as said parcel is shown on that certain map entitled "TRACT 7387 - BAYPORT", filed for record on June 24, 2003 in Book 271 of Maps at pages 1 through 34, inclusive, Alameda County Records, more particularly described as follows:

BEGINNING at the southwest corner of said REMAINDER PARCEL;

Thence along the westerly line of said parcel, also being the easterly right-of-way line of Main Street, as shown on said map, North 00°34'11" East 1398.37 feet to the northerly line of said REMAINDER PARCEL;

Thence leaving said lines, and along last said line, South 87°57'28" East 1923.89 feet to the westerly line of said REMAINDER PARCEL;

Thence leaving said line and along last said line, North 2°47'17" East 364.75 feet to a the northerly line of said REMAINDER PARCEL;

Thence leaving said line and along last said line, South 87°12'43 East 319.50 feet to the TRUE POINT OF BEGINNING;

Thence continuing along said line, South 87°12'43" East 31.75 feet to the westerly line of said REMAINDER PARCEL;

Thence leaving said line and along last said line North 2°47'17" East 1472.64 feet to the northerly line of the parcel described as PROPOSED STORM WATER TREATMENT POND PARCEL;

Thence leaving said line and along last said line and continuing along the northerly line of said REMAINDER PARCEL the following nineteen (19) courses:

1. North 89°46'04" 1607.19 feet;
2. South 76°59'47" West 30.74 feet;
3. North 00°30'07" West 15.37 feet;
4. South 76°59'47" West, 51.25 feet;

5. North 00°30'13" West 28.00 feet to the beginning of a non-tangent curve to the right, having a radius of 955.37 feet, to which point a radial line bears North 17°36'08" West;
6. Along said curve through a central angle of 1°14'55", an arc length of 20.82 feet to a compound curve, having a radius of 557.56 feet;
7. Along said curve, through a central angle of 15°51'00", an arc length of 154.24 feet;
8. North 89°29'47" East 183.18 feet;
9. North 00°42'53" West 10.00 feet;
10. North 87°10'47" East 238.51 feet to the beginning of a curve to the right having a radius of 1136.01 feet;
11. Along said curve, through a central angle of 3°03'09", an arc length of 60.52 feet;
12. South 89°46'04" East 1216.24 feet;
13. South 88°07'13" East 367.67 feet to the beginning of curve to the right, having a radius of 563.14 feet;
14. Along said curve, through a central angle of 6°00'30", an arc length of 59.05 feet;
15. South 82°06'43" East 841.27 feet to the beginning of a curve to the right having a radius of 2867.83 feet,
16. Along said curve, through a central angle of 00°36'00", an arc length of 30.03 feet to a compound curve, having a radius of 1435.47 feet,
17. Along said curve, through a central angle of 1°12'01", an arc length of 30.07 feet to a compound curve, having a radius of 958.04 feet;
18. Along said curve, through a central angle of 01°47'59", an arc length of 30.09 feet to a compound curve, having a radius of 719.34 feet,
19. Along said curve through a central angle of 1°12'56", an arc length of 15.26 feet to the easterly line of said REMAINDER PARCEL, being the beginning of a non-tangent curve to the left, having a radius of 30,050.01 feet, to which point a radial line bears North 66°03'48" West;



Thence leaving said line and along said easterly line the following seven (7) courses:

1. Along said curve, through a central angle of  $00^{\circ}56'00''$ , an arc length of 489.48 feet to the beginning of a non-tangent curve to the left, having a radius of 60.00 feet, to which point a radial line bears North  $2^{\circ}09'25''$  West;
2. Along said curve, through a central angle of  $63^{\circ}17'05''$ , an arc length of 66.27 feet to a compound curve having a radius of 1222.09 feet;
3. Along said curve, through a central angle of  $31^{\circ}53'47''$ , an arc length of 680.33 feet to a compound curve having a radius of 1434.10 feet;
4. Along said curve, through a central angle of  $07^{\circ}09'19''$ , an arc length of 179.09 feet;
5. North  $87^{\circ}12'43''$  West 332.59;
6. South  $02^{\circ}04'31''$  West 464.06;
7. North  $87^{\circ}55'29''$  West, 499.91 feet to the easterly line of Tinker Avenue as said avenue is shown on that certain map entitled "TRACT 7511 - BAYPORT", filed for record on July 9, 2004 in Book 277 of Maps at pages 1 through 19, inclusive, Alameda County Records;

Thence leaving said line along last said line North  $02^{\circ}08'09''$  East 82.50 feet to the northerly right-of-way line of said Tinker Avenue;

Thence leaving said line and along said right-of-way line the following three (3) courses:

1. North  $87^{\circ}55'29''$  96.65 feet to the beginning of a curve to the left having a radius of 1350.00 feet;
2. Along said curve, through a central angle of  $13^{\circ}47'43''$ , an arc length of 325.04 feet;
3. South  $78^{\circ}16'48''$  West 21.27 feet to the easterly line of the PROPOSED STORM WATER PUMP STATION PARCEL;

Thence leaving said right-of-way line and along last said line, North  $02^{\circ}47'17''$  East 115.84 feet to the northerly line of last said parcel;

Thence leaving said line and along last said line, North  $87^{\circ}12'43''$  West 64.00 feet to the easterly line of the PROPOSED 39 UNIT PARCEL;

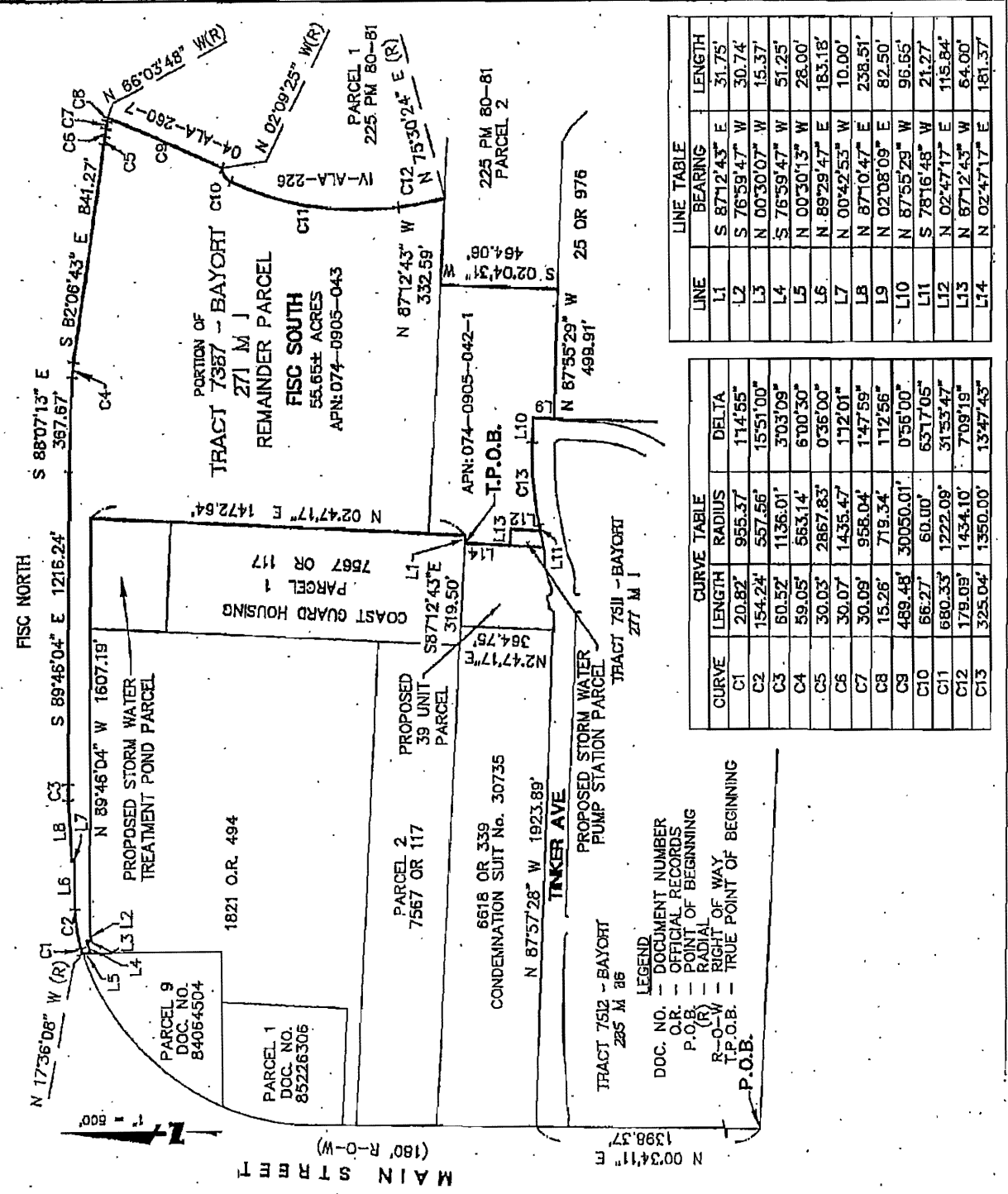
Thence leaving said line and along last said line, North  $02^{\circ}47'17''$  East 181.37 to the TRUE POINT OF BEGINNING.

Containing an area of 55.65 acres, more or less.

**Basis of Bearings:**

The Bearing between two found "City of Alameda" monuments on Main Street as shown on that certain map entitled, TRACT 7387 - BAYPORT, filed for record on June 24, 2003, in Book 271 of Maps at pages 1 through 34, inclusive, Alameda County Records, and taken as North  $00^{\circ}34'11''$  East 2613.13 feet is the Basis of Bearings for this map. Bearings are based on the California Coordinate System of 1927 Zone III. All distances in this description are ground distances. Multiply by 0.9999295 to obtain grid distances.

A plat showing the above description is attached herein and made a part hereof as Exhibit "A-1".



4780 Chabot Drive  
 Suite 104  
 Pleasanton, CA 94588  
 925/398-7700  
 925/398-7799 (FAX)

Subject EXHIBIT "A-1"  
FISC SOUTH REMAINDER  
 Job No. 20065092-10  
 By RL Date 11/03/06 Chkd. RLH  
 SHEET 1 OF 1

SFISC\_remainder.txt

Parcel name: SFISC\_remainder

North: 473148.7231 East : 1485055.0457  
 Line Course: S 87-12-43 E Length: 31.75  
     North: 473147.1788 East : 1485086.7581  
 Line Course: N 02-47-17 E Length: 1472.64  
     North: 474618.0756 East : 1485158.3896  
 Line Course: N 89-46-04 W Length: 1607.19  
     North: 474624.5896 East : 1483551.2128  
 Line Course: S 76-59-47 W Length: 30.74  
     North: 474617.6727 East : 1483521.2611  
 Line Course: N 00-30-07 W Length: 15.37  
     North: 474633.0421 East : 1483521.1264  
 Line Course: S 76-59-47 W Length: 51.25  
     North: 474621.5102 East : 1483471.1907  
 Line Course: N 00-30-13 W Length: 28.00  
     North: 474649.5092 East : 1483470.9446  
 Curve Length: 20.82 Radius: 955.37  
     Delta: 1-14-55 Tangent: 10.41  
     Chord: 20.82 Course: N 73-01-20 E  
     Course In: S 17-36-08 E Course Out: N 16-21-13 W  
     RP North: 473738.8706 East : 1483759.8550  
     End North: 474655.5885 East : 1483490.8566  
 Curve Length: 154.24 Radius: 557.56  
     Delta: 15-51-00 Tangent: 77.62  
     Chord: 153.75 Course: N 81-34-17 E  
     Course In: S 16-21-13 E Course Out: N 00-30-13 W  
     RP North: 474120.5861 East : 1483647.8458  
     End North: 474678.1246 East : 1483642.9451  
 Line Course: N 89-29-47 E Length: 183.18  
     North: 474679.7346 East : 1483826.1180  
 Line Course: N 00-42-53 W Length: 10.00  
     North: 474689.7339 East : 1483825.9933  
 Line Course: N 87-10-47 E Length: 238.51  
     North: 474701.4693 East : 1484064.2144  
 Curve Length: 60.52 Radius: 1136.01  
     Delta: 3-03-09 Tangent: 30.27  
     Chord: 60.52 Course: N 88-42-22 E  
     Course In: S 02-49-13 E Course Out: N 00-13-56 E  
     RP North: 473566.8353 East : 1484120.1098  
     End North: 474702.8359 East : 1484124.7141  
 Line Course: S 89-46-04 E Length: 1216.24  
     North: 474697.9065 East : 1485340.9441  
 Line Course: S 88-07-13 E Length: 367.67  
     North: 474685.8464 East : 1485708.4162  
 Curve Length: 59.05 Radius: 563.14  
     Delta: 6-00-30 Tangent: 29.55  
     Chord: 59.03 Course: S 85-06-58 E  
     Course In: S 01-52-47 W Course Out: N 07-53-17 E  
     RP North: 474123.0094 East : 1485689.9444  
     End North: 474680.8210 East : 1485767.2287  
 Line Course: S 82-06-43 E Length: 841.27  
     North: 474565.3668 East : 1486600.5386  
 Curve Length: 30.03 Radius: 2867.83  
     Delta: 0-36-00 Tangent: 15.02

Chord: 30.03	SPISC_remainder.txt
Course In: S 07-53-17 W	Course: S 81-48-43 E
RP North: 471724.6818	Course Out: N 08-29-17 E
End North: 474561.0896	East : 1486206.9646
Curve Length: 30.07	East : 1486630.2641
Delta: 1-12-01	Radius: 1435.47
Chord: 30.07	Tangent: 15.03
Course In: S 08-29-17 W	Course: S 80-54-42 E
RP North: 473141.3428	Course Out: N 09-41-18 E
End North: 474556.3398	East : 1486418.3841
Curve Length: 30.09	East : 1486659.9574
Delta: 1-47-59	Radius: 958.04
Chord: 30.09	Tangent: 15.05
Course In: S 09-41-18 W	Course: S 79-24-42 E
RP North: 473611.9636	Course Out: N 11-29-17 E
End North: 474550.8104	East : 1486498.7302
Curve Length: 15.26	East : 1486689.5369
Delta: 1-12-56	Radius: 719.34
Chord: 15.26	Tangent: 7.63
Course In: S 11-29-17 W	Course: S 77-54-15 E
RP North: 473845.8815	Course Out: N 12-42-13 E
End North: 474547.6126	East : 1486546.2705
Curve Length: 489.48	East : 1486704.4589
Delta: 0-56-00	Radius: 30050.01
Chord: 489.47	Tangent: 244.74
Course In: S 66-03-48 E	Course: S 23-28-12 W
RP North: 462355.5246	Course Out: N 66-59-48 W
End North: 474098.6082	East : 1514170.0027
Curve Length: 66.27	East : 1486509.5057
Delta: 63-17-05	Radius: 60.00
Chord: 62.96	Tangent: 36.98
Course In: S 02-09-25 E	Course: S 56-12-03 W
RP North: 474038.6507	Course Out: N 65-26-30 W
End North: 474063.5879	East : 1486511.7640
Curve Length: 680.33	East : 1486457.1916
Delta: 31-53-47	Radius: 1222.09
Chord: 671.58	Tangent: 349.23
Course In: S 65-26-30 E	Course: S 08-36-37 W
RP North: 473555.6635	Course Out: S 82-39-43 W
End North: 473399.5740	East : 1487568.7297
Curve Length: 179.09	East : 1486356.6488
Delta: 7-09-19	Radius: 1434.10
Chord: 178.98	Tangent: 89.66
Course In: N 82-39-43 E	Course: S 10-54-56 E
RP North: 473582.7421	Course Out: S 75-30-24 W
End North: 473223.8337	East : 1487779.0033
Line Course: N 87-12-43 W	East : 1486390.5410
Length: 332.59	
North: 473240.0114	East : 1486058.3447
Line Course: S 02-04-31 W	Length: 464.06
North: 472776.2558	East : 1486041.5399
Line Course: N 87-55-29 W	Length: 499.91
North: 472794.3580	East : 1485541.9570
Line Course: N 02-08-09 E	Length: 82.50
North: 472876.8015	East : 1485545.0324
Line Course: N 87-55-29 W	Length: 96.65
North: 472880.3014	East : 1485448.4458
Curve Length: 325.04	Radius: 1350.00
Delta: 13-47-43	Tangent: 163.31
Chord: 324.26	Course: S 85-10-39 W

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Course In: S 02-04-31 W	Course Out: N 11-43-12 W
RP North: 471531.1868	East : 1485399.5589
End North: 472853.0420	East : 1485125.3346
Line Course: S 78-16-48 W	Length: 21.27
North: 472848.7214	East : 1485104.5081
Line Course: N 02-47-17 E	Length: 115.84
North: 472964.4243	East : 1485110.1427
Line Course: N 87-12-43 W	Length: 64.00
North: 472967.5374	East : 1485046.2185
Line Course: N 02-47-17 E	Length: 181.37
North: 473148.6927	East : 1485055.0406

Perimeter: 10092.31 Area: 2,423,900.12 sq.ft. 55.65 acres

Mapcheck Closure - (Uses listed courses, radii, and deltas)

Error Closure: 0.0309	Course: S 09-29-38 W
Error North: -0.03045	East : -0.00509

Precision 1: 326,612.30